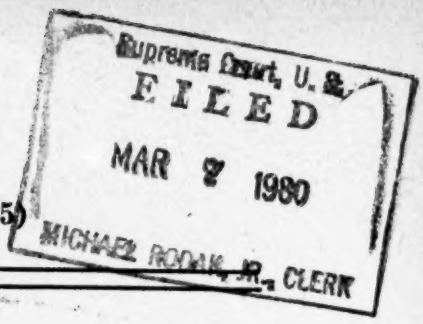

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In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1082

NATIONAL LABOR RELATIONS BOARD,
Petitioner

—v.—

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO AND COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 10, 1980
CERTIORARI GRANTED JANUARY 21, 1980

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1082

NATIONAL LABOR RELATIONS BOARD,
Petitioner

—v.—

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO AND COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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BEFORE THE
NATIONAL LABOR RELATIONS BOARD

2nd Region

Case Nos. 2-CC-1364
2-CE-75
2-CC-1365

IN THE MATTER OF:

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION AND NEW YORK SHIPPING ASSOCIATION, INC.

and

DOLPHIN FORWARDING, INC.

and

SAN JUAN FREIGHT FORWARDERS, INC.

26 Federal Plaza
New York, New York
July 11, 1977

Hearing in the above-entitled matter convened at 3:30 p.m. pursuant to notice.

BEFORE:

HENRY L. JALETTE, Administrative Law Judge

Appearances:

IRWIN M. PORTNOY, ESQ.
RANDALL N. HARAKAL, ESQ.
Counsel for the General Counsel
National Labor Relations Board
26 Federal Plaza, New York, New York

DONALD CARUSO, ESQ.
Of counsel, Lorenz, Finn, Giardino & Lambos, Esqs., Attorneys for Respondent N.Y. Shipping, 25 Broadway, New York, New York

JAMES F. MAHER, ESQ.
Of counsel, Zelby, Burstein, Bernstein & Hartman, Esqs., Attorneys for Puerto Rico Maritime Shipping Authority and Puerto Rico Maritime Management, Inc., One World Trade Center, New York, New York

THOMAS D. CONWAY, ESQ.
Of counsel, Brady, Tarpey & Hoey, P.C., Attorneys for Charging Parties, 84 William Street, New York, New York

HERZL S. EISENSTADT, ESQ.
Gleason, Laitman, Mathews, Magidson & Rosen, Esqs., Attorneys for Respondent International Longshoremen's Association, 17 Battery Place, New York, New York.

* * * *

[49] MR. CARUSO: I indicated before that I was in basic agreement with this stipulation and I would be willing to stipulate to all of Paragraphs 2, 3, 4 and 5 with the exception of Paragraph 4A and with respect to Paragraph 4A, I think the only limitation that has to be imposed on the statements contained in Paragraph 4A is that Trans-American Trailer Transport for which I will refer to hereinafter as TTT or Triple T ceased operations in the New York Puerto Rican trade on August 1, 1974 when its vessels were purchased by PRMSA.

JUDGE JALETTE: Will you accept that stipulation respecting Paragraphs 2 through 4C, I believe with 4A as modified by Mr. Caruso—I'm sorry, through 5C?

MR. PORTNOY: I will accept it with the exception, with one thing that we will—Mr. Caruso has admitted that the allegations in the later paragraph that TTT and MTM were fined by the contract board and I don't want, down the road, someone saying that I admitted that TTT was not fined by the contract board.

JUDGE JALETTE: I don't see how you could ever relate to the two items Mr. Portnoy.

MR. PORTNOY: Okay, fine.

JUDGE JALETTE: So, as I understand it, as between [50] counsel for the general counsel and Mr. Caruso, we have stipulated to Paragraphs 2 through 5C with a modification of Paragraph 4A indicating that TTT ceased the operation of vessels between New York and Puerto Rico on or about August 1, 1974 having sold its vessels to PRMSA?

MR. CARUSO: Yes, but it also goes to Paragraph 5D which beins on Page 3. I would be willing to stipulate through 5D.

JUDGE JALETTE: The stipulation is noted as regards general counsel and the New York Shipping Association.

What about you, Mr. Eisenstadt, is there any of that that you stipulate to?

MR. EISENSTDAT: Just one moment, your Honor, I think we can get some of that.

(Pause)

MR. EISENSTDAT: With the same qualification of Mr. Caruso, we have no particular disagreement with those stipulations.

JUDGE JALETTE: May I take it for the purposes of this proceeding you will stipulate to the same matters we have just described?

MR. EISENSTADT: I take it for granted that counsel for the general counsel has checked into the matters as far as place of business and so on and so on?

As far as the amount of revenue involved I think it's a question of common knowledge that these various [51] entities have earned quite a bit in excess of that over the period of time concerned.

JUDGE JALETTE: I will accept your remarks as a stipulation of Paragraphs 2 through 5D with the modification described by Mr. Caruso.

* * * *

[56] JUDGE JALETTE: With that understanding from respondent NYSA I will accept the stipulation to Paragraph 10.

What about Mr. Eisenstadt?

MR. EISENSTADT: These various documents except with respect to Exhibit—they are all various minutes or letters from the NYSA ILA contract board.

We do not find that they have—that they are inaccurate as far as their authenticity is concerned.

As far as their relevancy, et cetera, we take the same position, of course as Mr. Caruso.

JUDGE JALETTE: I gather that you would agree to stipulate them into evidence with the same reservations that Mr. Caruso expressed?

MR. EISENSTADT: Yes.

JUDGE JALETTE: With that understanding the stipulation is noted.

[57] Exhibits A through E are received into evidence as part of General Counsel Exhibit No. 3 for identification.

* * * *

[58] MR. CARUSO: I am willing to stipulate to Paragraph 11, 12, 13, 14, 15 with the same reservations that I noted with respect to Paragraph 10.

JUDGE JALETTE: As to all of them?

MR. CARUSO: As to Paragraph 11, 12, 13, 14 and 15 I will stipulate with the same reservations that I indicated when I agreed to Paragraph 10.

JUDGE JALETTE: As to the relevancy of the exhibit and your right to put in any rebuttal evidence or rebuttal testimony?

MR. CARUSO: Yes.

JUDGE JALETTE: With that modification, that is received.

MR. EISENSTADT: I find no difficulty with Exhibit F, G, Exhibit H, Exhibit I and with Exhibit J.

JUDGE JALETTE: That's the same as Mr. Caruso?

MR. EISENSTADT: Easily these documents are uncontroversial.

JUDGE JALETTE: I will accept that as the stipulation of the I.L.A.

* * * *

[123] RUSSELL MC HUGH

called as a witness, having been first duly sworn by the judge, was examined and testified as follows:

JUDGE JALETTE: Please give your name and address to the reporter.

THE WITNESS: My name is Russell McHugh. I am currently residing at Burnet Avenue, Syracuse, New York.

DIRECT EXAMINATION

* * * *

[124] Q Were you ever employed by Dolphin Forwarding, Inc.?

A Yes.

Q During what period were you employed by Dolphin Forwarding Inc.?

A From March 1973 until July 1977.

Q What was the title of your job?

A Operations manager.

Q In your capacity as operations manager, you have the knowledge of the company's operations?

A Yes.

Q What business is Dolphin engaged in?

A Dolphin is engaged in the transportation services on a nonvessel operating common carrier in the Puerto Rican trade.

Q Does Dolphin possess any authority to operate granted by an agency of the United States Government?

A Yes.

Q What agency, what authority does it operate under?

A Dolphin operates under a tariff on file with the Federal Maritime Commission.

* * * *

[125] The offices were located until July 1973, the general offices in Randolph, Massachusetts.

At that time we moved to Hanover, Massachusetts and we have remained there until I terminated my employment.

Q (By Mr. Portnoy) During 1973 and prior to September 1, 1974 how many employees were employed at the company's principal offices in Randolph, Massachusetts and then in Hanover, Massachusetts?

A Five.

Q Would you in a general way describe the function?

A General, administrative and clerical functions.

Q Any employees engaged in sales functions?

A Yes.

Q Would you tell us who engaged in the sales functions?

A Primarily the president, Richard Lee.

Q Does any carrier—do you know how work or your sales are generated?

Is that alone or with the assistance of any firm or carrier?

A No, the sales effort is conducted by Dolphin on its own behalf.

Q Does any carrier help you to generate business?

[126] A No.

Q Now, could you describe what happens in the movement of a container by Dolphin from the time that a sale is effected of the transportation services that are involved in that container?

Let's suppose that we have a manufacturer of shoes in Maine who wishes to ship them to the Puerto Rican trade, what does he do and what do you do?

A Well, upon becoming aware of Dolphin's loading facilities the manufacturer will choose his form of transportation to get the product to Dolphin for passage to Puerto Rico.

Dolphin will receive this freight at its facilities, load it into an ocean container and tender that fully loaded ocean container to the steampship lines for passage to Puerto Rico.

Q In 1973 and 1974 what facilities did Dolphin have for receiving containers and stuffing them?

A Dolphin maintained a terminal initially at Hasbrouck Heights and subsequently Carlstadt, New Jersey.

Q Would you tell us—did you operate—did Dolphin own those and operate those facilities in Hasbrouck Heights and Carlstadt itself?

A No.

Q Who if anyone was employed or would Dolphin have an [127] arrangement with to operate those facilities?

A Dolphin employed a warehouseman, Passaic terminal warehouse as agent to receive and load freight for Puerto Rico.

Q What did that warehouseman do specifically?

A He would receive in the name of Dolphin shipments for Puerto Rico, manifest them, load them into containers and dispatch them into the piers.

Q You were speaking of Passaic terminal warehouse?

A Yes.

Q I am going to refer to it as PTW. Did PTW have any employees who performed this work pursuant to the arrangement that we are talking about?

A Yes.

Q What kind of—what kind of labor did it employ? What did they do?

MR. CARUSO: I am going to object because I don't believe Mr. Portnoy has laid a foundation that this witness has personal knowledge of the operations of Passaic terminal.

JUDGE JALETTE: Objection sustained.

Q (By Mr. Portnoy) Did you ever visit any of those facilities yourself?

A Yes, sir.

Q Did you have an opportunity to observe the manner in [128] which containers were loaded pursuant to the arangement between PTW and Dolphin?

A Yes.

Q Now, would you be good enough to describe what PTW did and how it functioned in the loading of that container?

A Well, they would receive the freight from the motor carriers delivering it to that address.

Q Who did that? Who was involved in the receipt of that?

A The various employees that happened to be on the dock there at that time.

Q So that is it correct to say that they employed dock personnel?

A Yes.

Q What did those dock personnel do with the shoes after they took it in at the dock? What did they do with it?

A Generally it was set aside in a—I guess you would say a convenient location so that this freight could aggregate into a full container load with other shipments either on hand or to come in.

Once it reached into the proportion of a full container load, then these employees would then suff that container. [129] Q What happened to the container after it was stuffed?

A It would then be sealed. A dock receipt would be prepared along with a manifest, if necessary and it would be dispatched to the piers where it would be accepted and put aboard a ship.

Q To your knowledge were PTW employees employed by deep sea ILA labor?

A No.

JUDGE JALETTE: What was your question? Were they employed by deep sea ILA labor?

Q (By Mr. Portnoy) Did PTW employ personnel represented by ILA labor?

JUDGE JALETTE: That's not what you asked.

THE WITNESS: Still no.

Q (By Mr. Portnoy) We talked about containers. How would these containers arrive at PTW? What was the arrangement for obtaining these containers?

A We would secure a booking number from the steamship lines upon which a container could be released to a motor carrier or anyone else with an interchange agreement with that steamship line.

It would then be brought to our facility for loading.

Q Will you tell us how a booking number is secured and [130] what that means?

A A booking number is simply a reservation aboard ship for one or however many containers you are designated and it is secured simply by contacting the steamship line directly or one of their agents.

Q Now, prior to September 1, 1974 what ocean carriers were utilized by Dolphin in the movement of these containers?

A Seatrain Lines Inc. and Trans-American Trailer Transport.

Q Do you know where Seatrain Lines got these containers?

A Yes, they were owned by Seatrain.

Q How about Trans-American Trailer Transport who I will refer to from time to time as Triple T?

A They owned a few of the trailers that they furnished. A vast majority seem to come from the railroad trailer pools.

MR. CARUSO: I am wondering if we can get some idea of the number of containers moved.

The word majority to me is meaningless.

JUDGE JALETTE: Why don't you take that up on cross-examination? These are containers you are talking about, you say?

THE WITNESS: Yes.

JUDGE JALETTE: Seatrain owned its own TTT containers, [131] a majority were obtained from other sources you say?

THE WITNESS: Yes.

Q (By Mr. Portnoy) Now, to your knowledge were any of Dolphin's containers both prior to September 1, 1974 and after September 1, 1974 ever stuffed by labor represented by the Deep Sea ILA locals?

A One.

Q Would you—now, how many containers did you move on an average per week prior to September 1, 1974?

A Five to six on an average.

Q Five to six per week?

A Yes.

Q So, if I totaled five times 50 weeks, we are talking about 250 containers during the year, is that correct?

A That's right.

Q Now, you said that the ILA labor, Deep Sea Labor did stuff one container.

To your knowledge could you describe how that came to happen?

A To the best of my knowledge they preceded my involvement with Dolphin.

MR. CARUSO: I object on the grounds he doesn't have any personal knowledge of this incident.

JUDGE JALETTE: Sustained.

Q (By Mr. Portnoy) Now, after September 1, 1974 [132] did you have occasion or did Dolphin have occasion to utilize carriers other than Seatrain and Triple T in the Puerto Rican trade?

A Yes.

Q Would you tell us who those ocean carriers were?

A The carrier—it was on—I don't really know the full name. It was MTM.

MR. PORTNOY: Can we stipulate that MTM stands for Marine Transportation Management, Puerto Rican Inc.?

MR. CARUSO: So stipulated.

JUDGE JALETTE: Noted.

Q (By Mr. Portnoy) Anyone else?

A Puerto Rico Marine Management Inc. or PRMMI.

MR. PORTNOY: Can we enter into a similar stipulation?

MR. CARUSO: I will stipulate except to this extent it should be noted that the carrier involved is actually known as Puerto Rican Maritime Shipping Authority, that is the carrier that operates with a tariff on file with the Federal Maritime Commission.

The other two commissions referred to, MTM and PRMMI are operating companies that handle the operation of the vessels owned by PRMSA in the Puerto Rican trade.

JUDGE JALETTE: Does that conform to your understanding?

[133] MR. PORTNOY: Yes, I am perfectly willing to stipulate to that.

JUDGE JALETTE: All right.

Go ahead.

* * * *

Q Now, do you know Mr. Paul Semack?

A I have spoken with the man, yes.

Q Did you ever have occasion to speak to Mr. Semack concerning containers which were being stuffed by PTW or [134] Public or Park?

A Yes.

Q What was the date of that conversation?

A December 10, 1974.

Q Would you—how was that conversation carried out, was it in person or by telephone?

A By telephone.

Q Did he call you or did you call him?

A He called looking for Richard Lee who happened to be in Puerto Rico.

Q Now, tell us what he said to you and what you said to him.

A He said he had a list of containers that were recorded as being domiciled in Carlstadt.

Q Hold it for a moment.

What does domiciled mean?

A It means being physically located for loading.

Q Now, after he told you that he had a list of containers which were domiciled in Carlstadt, what did you say or what did he say to you?

A I told him I didn't think I was the person he wanted to speak to but I would be glad to take down the list of numbers and relay the information.

He gave me a list of approximately nine, maybe ten trailer numbers. Then he subsequently deleted one saying [135] it was a flat bed, it did not apply to Dolphin. He said that these containers were loaded by Dolphin within a 50 mile radius of the piers and that we were going to be fined under PRMSA's tariff provisions, $1,000 for each container and that additionally he would attempt to go back prior to October 1, 1974 and attempt to levy fines against Dolphin for loading within a 50 mile—within a 50 mile radius within the Port of New York.

Q Did he say anything else to your recollection?

A Yes. He said that our trailers were much too expensive for him to handle when he got fined $1,000 for each load.

He also said that he was refusing to issue us any trailers, he would not accept any more from us nor would he issue trailers to anyone else for our loading.

Q Anything else that you remember about that conversation?

A Yes. He said that we were attempting to deceive—I think he did say TTT or MTM in showing Hanover, Massachusetts as the origin of the shipment.

* * * *

[136] Q Did you ever call MTM or TTT again after that, after this conversation with Mr. Semack?

A Yes.

Q When was that?

A It was that afternoon. We had a trailer coninci-dentally, a Dolphin booking that was under load and was being brought in to MTM that very day. I attempted to get back to Semack and find out if that trailer would be accepted, if it would be refused, if it would be stripped and restuffed. What should we do with it?

[137] The driver was on the road some place. He wasn't there initially, but he did return the call and I —he really didn't want to address himself to the question.

Q Tell us what was said.

A Well, I finally put it to him.

I said, what are you going to do with that trailer and he said that, well, he would probably strip it and restuff it.

Q What in fact happened, if you know?

A Nothing. Nothing happened. It was accepted at the piers and sent to Puerto Rico routinely.

Q Now, after the second conversation with Mr. Semack did you ever attempt to—did you ever speak to anyone at MTM again or TTT in order to obtain trailers or containers?

A Yes on two or three occasions.

We received our booking numbers from an agent in the Boston area and I attempted to see if indeed we had been shut out and he said he had received a Telex instruction that no more booking members were to be issued to Dolphin nor would we receive any trailers that Dolphin had—any of TTT's trailers that Dolphin still had in his possession.

MR. EISENSTDAT: Who is "he" referring to?

[137a] THE WITNESS: This he, his name is Bud Oschman. He was employed by Northeast Agency.

Q (By Mr. Portnoy) Who is Northeast Agency?

[138] A To the best of my knowledge they are the regional sales agent for TTT, MTM.

Q Go ahead.

A Additionally I contacted Jerry O'Brien.

Q Who is he?

A The traffic manager for MTM and I asked him if indeed we could obtain bookings for loads that were not—that were or were not—could we get bookings at all from them and he said, no, the only bookings that Dolphin would be getting would be issued by Paul Semack.

Q What did you do after that, did you contact Mr. Semack?

A Well, no.

Semack had made it pretty plain it will be fruitless to obtain bookings.

* * * *

CROSS EXAMINATION

[140] Q You further mentioned the response to another question that Dolphin generated sales.

What do you mean by generating sales?

A A representative of Dolphin would visit the manufacturer or shipper's facilities, make known to that person or firm that Dolphin was available for transporting their goods to Puerto Rico and where our facilities for same were located.

Q How do you know this, were you physically present when these solicitations were made?

A On a few of them, yes.

* * * *

[144] Q And how was the approach made?

What was the approach of Dolphin to the potential customer?

What was it's pitch?

A That we were in the business of moving freight to Puerto Rico.

We felt we could provide a satisfactory service from the standing point of pricing and transit time.

Q Did you ever offer to show or did you show or did Mr. Lee in your presence show the potential customer how it would differ from what he was doing before then?

MR. PORTNOY: Objection.

[145] JUDGE JALETTE: Overruled.

THE WITNESS: On the few occasions that I was present I would have to say no.

Q (By Mr. Eisenstadt) Did you or Mr. Lee indicate to the potential customer or tell the potential customer that it could improve on the service he was already receiving elsewhere?

A Yes.

Q How?

A From the standpoint of pricing, and transit time.

Q What was the example?

A Our rates were lower.

Q Lower than what?

A Puerto Rican Forwarding.

Q What is that?

A And NVO.

Q On any of those occasions when you were present were any of those comparisons made with respect to let us say the service of an ocean carrier?

MR. PORTNOY: Objection.

JUDGE JALETTE: Overruled.

THE WITNESS: I don't think so.

Q (By Mr. Eisenstadt) Does that mean you are not certain or you just don't recall?

A I don't recall, but, I also don't think so.

* * * *

[146] Q (By Mr. Eisenstadt) Mr. McHugh, aside from solicitations by personal interview and by documents, were [147] there any other manners that you were aware of whereby Dolphin generated business?

A Well, I would think by telephone.

* * * *

[149] Q Now, when those goods arrived at for instance Passaic or Public's or Park's facilities, they would co-

mingle that, the goods with other goods before—and put it into a container, is that correct?

A Yes.

* * * *

[155] JUDGE JALETTE: You are saying there are some containers which are not on wheels and some trailers which are not on wheels?

You said some were detachable and some were not?

THE WITNESS: It depends on the mode of operation.

There is one type of operation where a crane lifts up a box which is the trailer less the wheels and stacks those one on top of another.

There is another mode where the whole unit wheels and all is physicaly rolled onto the ship.

[156] JUDGE JALETTE: Could you give different names?

THE WITNESS: Yes, one is lift-on lift-off which involves the denominal container bodies, the other is all on roll-off.

JUDGE JALETTE: They are both containers?

THE WITNESS: Yes.

JUDGE JALETTE: You want the deminsions?

Q (By Mr. Eisenstadt) These were metal boxes, right?

A Yes.

Q They are about anywhere from 20 to 40 foot in length?

A Yes.

Q Did they have any markings on them?

A Yes.

Q What were the markings?

A The markings could have shown as either Seatrain Lines, Transamerican Trailer Transport or any one of a number of railroad companies or trailer leasing companies.

Q The ones that were shipped by Seatrain and by TTT, what did they show?

A Seatrain in almost all cases were marked as STLU Seatrain Lines.

The TTT units were just any one of a number of things.

Q Did any of them bear Dolphin's name on them?
A No.
Q What about Passaic markings?
[157] A No.
Q What about Park markings?
A No.
Q What about Public markings?
A No.

* * * *

[160] Q Now, on the movement from the warehousemen from the agent, Passaic, Park or Public to the piers, how did they get there?
A By truck.
Q Who would arrange for the truck movement?
A Either Dolphin or it's agent.
Q By it's agent meaning who?
A Passaic, Public Warehouse Service Sales or Park Service.
Q What trucking firm, to you knowledge, delivered containers from Passaic down to the docks?
A Interocean Service Corporation I.).S.
Q Is that an affiliate with Dolphin?
A No.
Q Is that an affiliate to your knowledge with Passaic?
A I think so.

* * * *

[161] Q What did they do?
A We would establish who we would wish to have our [162] containers moved to the pier by.
Q You made that determination, by you I mean Dolphin?
A Yes.
Q How did they communicate that determination?
A By telephone.
Q Did they call up let's say Interocean Service and say we have a container at Passaic, take it down to the piers?
A Yes.
Q Who paid for that move?
A Dolphin.

Q Directly?
A Yes.
Q Who paid Passaic for it's services?
A Dolphin—for loading?
Q For loading, receiving, storing, stuffing, sealing.
A Dolphin.

* * * *

[166] Q (By Mr. Eisenstadt) You testified as to a conversation that you had with Mr. Semack in December, 1974.
What was Mr. Semack's tone of voice?
JUDGE JALETTE: Does that make any difference?
MR. EISENSTADT: I will withdraw that, your honor.
Q (By Mr. Eisenstadt) Mr. Semack is claiming he has stated his list of containers and they appear to be domiciled in Carlstadt, is that correct?
A Yes.
Q Did he explain how he obtained that impression?
A I don't think so.
Q Did he state to you why containers would not be leased to Dolphin thereafter?
[167] A Yes.
Q What was the reason given?
A That he was receiving funds of a thousand dollars per trailer on units loaded within the 50 mile radius.
This made it much too expensive for him to do business with us.

* * * *

[171] Q With respect to the Seatrain movements, did Dolphin prepare the ocean documentaton?
When I say ocean documentation, I mean, the ocean bill of lading.
A Yes.

* * * *

[175] MR. CARUSO: Your Honor, in view of that I would like to make an offer of proof at this time with respect to this.
I would first ask that this particular exhibit, that is, Respondent NYSA 1 be introduced and accepted into evidence.

JUDGE JALETTE: For what purpose?

MR. CARUSO: For the purpose of establishing that this witness as the operations manager for Dolphin, if I had continued to question him and as disclosed on this particular exhibit would have shown that the documentation prepared by Dolphin Forwarding Inc. to Seatrain lines for 1, specifically indicated that the cargo or the container that was being delivered to the carrier for shipment to Puerto Rico always disclosed Hanover, Massachusetts as the port of origin or Boston, Massachusetts regardless of whether that particular container was loaded at some other location, for example, at their agent's terminal in New Jersey; that this was done because of the restriction that they were well aware of—that Dolphin was well aware of on the rules of containers; that any container [176] that moved from a point outside of the 50 mile radius from the Port of New York would be permitted to move onboard the vessel without any handling by "ILA laborers".

This was the exception of the routes to containers and Dolphin knowing this exception specifically indicated on the documentation facts which they knew were incorrect in order to avoid the imposition of the rules on containers.

JUDGE JALETTE: Your offer of proof is rejected. The document will be put in the rejected exhibit file.

(Respondent Exhibit No. 1 rejected.)

Q (By Mr. Caruso) With respect to your conversations with Mr. Semack in December, 1974, you did indicate that you had occasion thereafter to discuss it, discuss those conversations with Mr. Bud Oschman.

When you spoke to Mr. Oschman did you make a statement to him that Dolphin had been found?

A I think it was something like that.

Q I assume that you had some understanding of what the word found meant and that I would also take it that Mr. Oschman understood what the word found meant?

A Yes, I think so.

Q What did you mean by the word found?

MR. PORTNOY: Objection.

He is asking for the witness' conclusion.

[177] JUDGE JALETTE: Overruled.

THE WITNESS: What is your question?

Q (By Mr. Caruso) What did you mean when you said we were found?

A That we were located loading cherries (phonetic) in the Carlstadt location.

Q Does not the would found presuppose that some action was taken by Dolphin prior so that Dolphin would not be found?

MR. PORTNOY: Objection.

JUDGE JALETTE: Sustained.

* * * *

[181] Q At the time that you had the conversation with Mr. Semack I take it that it was clear in your mind that you would not be obtaining ocean containers from MTM?

A Yes.

Q Was Dolphin in a position to continue to move it's cargo through the Port of New York at that time?

A I don't think so.

* * * *

[182] Q So that in effect the so-called railroad trailers that you are referring to were actually trailers either owned by, leased or under the control prior to August 1, 1974 by TTT and after August 1, 1974 PRMSA or MTM as the operating company for PRMSA?

A Yes.

Q So that you didn't, on your direct, you didn't want to leave any impression that you were able to utilize trailers other than trailers that were under the ownership control of the steamship carriers?

A I think not—will you repeat the question?

Q So that on your direct testimony you were not leaving [183] the impression that Dolphin was able to operate trailers other than those that were under the control or ownership of the steamship carriers?

A Yes.

Q To put it another way, but with the fact that the steamship carriers were providing Dolphin with the use of rail containers, Dolphin could not operate?

A Not through the Port of New York .

* * * *

REDIRECT EXAMINATION

[186] Q (By Mr. Portnoy) You testified that before on cross-examination as to the significance of obtaining a booking number and I think you testified that it signified two things, is that correct?

A Yes, I think it did.

Q Will you tell us again what it signified?

A One that you could draw a container to load and two, that that would be put aboard ship.

Q So that when you call for a booking number—during the course of calling for a booking number, did you at any point disclose who you were and by you, I mean Dolphin?

A Yes.

* * * *

[190] Q You indicated you had one instance where you didn't obtain the container from the steamship line, you obtained it from a transport company, it was a railroad container.

Was it a railroad container that was either leased or under the control of TTT or MTM?

A After we advised MTM that we have the piece of equipment and wished to load it aboard, they then assumed per diem lease.

Q With the railroad?

A With the railroad.

Q Dolphin never assumed that obligation?

A No.

Q So even though you are using the container, Dolphin is using the container, the steamship company is paying for the use of that container?

A Within certain guidelines, yes.

* * * *

[191] Was it possible for Dolphin to operate if it did not obtain ocean containers from the steamship companies?

A No.

* * * *

[206] MR. CARUSO: May I then make an offer of proof that if I did have the opportunity to examine on that, I would have elicited the following evidence?

JUDGE JALETTE: Well, have you got it prepared already?

MR. CARUSO: I have it prepared in handwritten form.

And I can read it to you.

It's not that long.

JUDGE JALETTE: You may, yes.

MR. CARUSO: If I were permitted to examine officers of San Juan and of Dolphin I would have elicited the following evidence:

One, that both San Juan and Dolphin hold themselves out to the general public as common carriers in interstate commerce.

Two, that these companies arrange for the assembly [207] LTL cargo into ocean containers.

That they also either arrange for themselves remove or distribute this LTL cargo out of the ocean container and distribute such cargo to the consignees thereof.

Three, that for these services these companies receive compensation for the entire package of services offered by them, including the assembly and distribution of LTL cargo.

* * * *

[209] RICHARD W. LEE,

having been first duly sworn, was examined and testified as follows:

JUDGE JALETTE: Be seated, please.

Give your name and address to the reporter.

THE WITNESS: Richard W. Lee, 11 Harley Street, Hangham, Massachusetts.

DIRECT EXAMINATION

Q (By Mr. Portnoy): You are the president of Dolphin Forwarding, Inc., sir?

A Yes, sir.

Q When was Dolphin formed as a corporation?

A 1964, July.

Q What state?

A Commonwealth of Massachusetts.

Q What does Dolphin engage in?

* * * *

[210] Q What is the function of a non-vessel operating common carrier?

A Receive shipment usually less than full load shipments, less than truckload shipments, move them in container and on its own bill of lading with its own responsibility from point of receipt through to destination terminal, breaks out the shipments, makes deliveries to the individual consignee.

* * * *

[211] Q Any of these individuals or any individuals at Hanover, Massachusetts perform sales functions?

A Yes, sir.

Q On behalf of Dolphin?

A Yes.

Q Who does?

A I do.

Q All right.

Would you tell us how you go about that?

A Well, we have advertising material which we [212] present to people who we know are shipping to Puerto Rico, offer our services, point out location of our facilities, explain our pricing and our customer services to them.

Q Okay.

Does any ocean carrier refer customers to you?

A No.

* * * *

[213] A We have shipments—we have received shipments originating in 1964 via shipments moving through the services of innercity transportation.

MR. EISENSTADT: Can I have the witness to raise his voice up?

I'm having a little difficulty hearing.

JUDGE JALETTE: Speak up.

A Yes.

Initially in 1964 shipments reached us in New York through intercity transportation.

In 1965 that was changed to New England Transportation Company.

Now, these two carriers were utilized by shippers as their ICC carrier for bringing shipments to the New York harbor where the shipments generally are containerized.

At this point they are sent to shipside, placed aboard ship, sent to Puerto Rico, discharged, taken by one of our companies in Puerto Rico, unloaded, delivered to all points and places in Puerto Rico and to the Virgin Islands.

[214] In 1969 the program was altered where we commenced using the two carriers who were principally or wholly container carriers, that is, their certificate was restricted to cargo moving prior to or after the—by water.

The shipments that moved in their services were their shipments on their billing.

We used that program through to 1974.

BY JUDGE JALETTE:

Q Who are these carriers you are talking about?

A These were interocean service corporation and two transport.

These were two carriers that were exclusively in the hauling of containers to and from shipside.

Q Is this in the United States?

A Yes.

* * * *

Q (By Mr. Portnoy): What ocean carriers were utilized in the movement of your goods since 1964?

A Seatrain Lines, TTT—that is Transamerican Trailer.

[215] Occasionally Sealand.

And after August of '74 it was MTM and PRMMI, which were operators of PRMSA.

* * * *

Q In the course of your operations you have obtained containers, is that correct, since 1964?

A Yes.

Q Okay.

Who furnished you or who—were those containers furnished you in Hanover, Massachusetts?

A No, sir.

Q Where were those containers delivered to?
A To the ICC carriers.
Q Did you engage in stuffing those containers with
[216] your—or utilizing your own employees?
A No.
Q Since 1964—will you tell us who stuffed those containers?
Who did you—since 1964.
A In 1964 they were loaded by Intercity Transportation in Long Island City.
In 1965 through 1969 they were loaded by New England Transportation in the Bronx.
In 1973 they were loaded by a warehouseman by the name of—yes, by Booth Freight Lines in Paterson, New Jersey.
In 1973 they were loaded by Passaic Terminal Warehouse in Hasbrouck Heights, in Carlstadt, New Jersey.
In 1974 and 5, they were loaded by Public Service Warehouse and by Park Service Corporation, both of which were in Newark, New Jersey.
Q Okay.
Were any of these employees represented by Deep Sea ILA locales?
By these employees, I mean the employees of Inter-City, New England, Booth, Freight Lines, Passaic Terminal, Public and Park.
A No.

* * * *

[228] Q Could you explain what you mean by LTL cargo?
A Okay.
The ocean carrier, namely Seatrain, developed an LTL program where they receive shipments as to—at a designated place.
And I think in this case it was Secaucus, New Jersey.
They—that organization, whatever it was, whether it was their own or not, I don't know.
I don't know.
All I know is that the cargo was contained by shippers to them as a carrier.

It was received, I'm quite sure, in Secaucus, loaded by those people in containers and the individual shipments remained identified as LTL shipments moving by Seatrain Lines and Seatrain's tariff, consigned to Dolphin International of Puerto Rico for distribution.

* * * *

[229] Q And you were not the exclusive deconsolidation agent for Seatrain in Puerto Rico?
A That's correct.
Q Were you at any time the exclusive agent for Seatrain Lines in Puerto Rico?
A I would—
Q When I say you, I am referring to Dolphin International.
A I know that.
I would have to say there were times we were close to it.

* * * *

CROSS EXAMINATION

[235] Q I would like to refer you to the testimony given by you before the Federal Maritime Commission on April 30, 1975 in Washington, D.C.
MR. PORTNOY: What page?
MR. CARUSO: Page 523, entitled Sealand Service, Inc. and Gulf of Puerto Rico Lines, Inc.—proposed rules on containers, docket No. 73-17 and 74-40.
Q A question was posed to you as follows:

Question: Mr. Lee, getting back to the time of your initial discussions with Seatrain in connection with the seed that led to the organization of Dolphin Forwarding, is it a fact that Seatrain offered to provide you with the means, with a ready means of soliciting customers?
Answer: It helped, yes.
It helped you solicit customers to that to that extent there was some assistance or inducement given by Seatrain for you to go into the LTL type of business?
Answer: No.
That just happened. It came.
Are you now changing the testimony you gave then?
A No, sir.

MR. PORTNOY: Objection.

The total testimony was not read into the record.

JUDGE JALETTE: You can read more if you want.

[236] He's asked his question and Mr. Lee has answered no.

Q You indicated on direct that no ocean carrier refers customers to you?

A I did not say that and that was not the question.

Q What did you say?

A I was asked as to whether the ocean carriers—it was in the present, not the past.

Q But at sometime the ocean carriers did refer customers to you?

A There was some help, but the carriers as such did not do it.

Q Did Seatrain help you solicit customers?

A As a company, no.

JUDGE JALETTE: How, if at all, if not as a company?

THE WITNESS: There were some salesmen that may have made some referrals.

Q Would one of those salesmen been Mr. Oshman?

A Yes.

Q What did Mr. Oshman and other employees of Seatrain do in the way of soliciting customers for Dolphin Forwarding?

A They did not solicit customers for Dolphin.

Q What did they do?

[237] A If they happened to have a customer or were going to have a customer—I can't speak for them, but this is my understanding of it.

And in the normal sales procedure that they would be going through, one thing that they did not have was an LTL program.

Q Referring to Seatrain?

A Yes.

Q Before you get into it, is it fair to state that at that time Sealand was in the Puerto Rican trade and Sealand did have an LTL program?

A Yes.

Q Continue with your narrative concerning what Mr. Oshman and other sales employees of Seatrain did.

A I just fall back on what I said, it helped.

Q How did it help?

A They could refer shippers to Dolphin as being a carrier that is performing service, LTL service to Puerto Rico.

Q Would these shippers have in the past been using LTL service provided by Sealand?

A Not necessarily.

Q But some did?

A I don't know that.

* * * *

[242] Q During that period of time—let's take 1964 to 1968—when—what carrier did Dolphin use in the Puerto Rican trade?

A Seatrain.

Q Was this done because of Seatrain's promise to help you, Dolphin Forwarding, solicit customers?

A No.

Q Why did you feel it was necessary for you to use Seatrain exclusively when Sealand also provides a service in Puerto Rican trade?

A Seatrain never solicited our cargo.

Q But you testified that it helped to solicit customers.

A I'm sorry, what did I just say?

Q You said Seatrain never—

A No, Sealand never solicited our cargo.

They never asked us for any of our cargo.

Q Isn't it a fact as an NVO—and you do at the present time—use more than one carrier to Puerto Rico?

A Yes.

Q Why do you do that?

A Well, the answer is not to put all our eggs in one [243] basket.

Q Doesn't it also give you more flexibility in terms of moving containers on any given day during the week?

A Yes.

Q Do these carriers have sailings on different days of the week?

A Yes.

Q So if you had a container you wanted to move on Tuesday you would move it on the carrier that had a sailing on Tuesday rather than wait for another carrier that would have a sailing on Friday?

A That would be an ideal—

Q You try to reach that ideal?

A No.

Q You do not?

A No.

Q Why do you use more than one carrier at the present time?

A We want to be able to have the equipment we need to provide the service we need.

Q And yet from 1964 to 1968 you did not feel it necessary to use other than—to use any other carrier other than Seatrain in the Puerto Rican trade?

A We did not feel it necessary.

Q Did you continue to use Seatrain exclusively after
[244] 1968?

A Yes.

I don't know how exclusively now.

Excuse me on that one.

For the most part we continued to use Seatrain after 1968.

Q At what point did you begin to use carriers other than Seatrain?

A 1974 I think we commenced using TTT if I have my dates right.

Q 1974?

A Yes.

Q Was there a reason you did that in '74?

A Yes.

Q What was the reason?

A Seatrain no longer measured up to the standard we needed.

Q What does that mean?

A Exactly what it says.

They no longer had the service that they had prior to that time.

Q They were still moving ships.

They still had vessels moving from New York to Puerto Rico?

A Yes.

Q What changed at Seatrain which necessitated your
[245] moving over and utilizing the services of TTT?

A Schedules were different.

Attention was different.

Q Did TTT solicit your business?

A Yes.

Q But you did indicate that there were occasions when you did ship containers on board Sealand vessels?

A That's right.

Q Didn't they solicit your business at that point?

A No.

Q Then you went to them and directly asked for the use of their service?

A Yes.

Q You did not feel it necessary to do that in the years when you used Seatrain exclusively?

A No.

Q Why?

A Because service by Seatrain was suitable.

Q It wasn't because you had an arrangement with Seatrain whereby you would use them exclusively if they helped you to solicit customers?

A No.

Q You indicated on direct that Dolphin never employed labor to physically load ocean containers?

A Yes.

[246] Q And you also used what you term agents?

A Yes.

Q And these agents always had facilities within the New York-New Jersey area?

A Always?

Q Well, I think you gave a list of the various agents you used.

When you indicated the address of their facilities, you said they were either in New York or New Jersey.

A Right.

Q Would all of them have been in the New York metropolitan area?

A Yes.

Q Would they all have been located within 50 miles of the Port of New York?

A Yes.

* * * *

[248] Q (By Mr. Caruso) I show you GC-7.

I ask you why this cost comparison was prepared in 1974.

A We were assessing our options to find out what we could do, what it would cost if we did this or did [249] that.

The only purpose was to put it down on paper so we could look at it, we, the company.

Q Was there any incident that caused you to consider these options?

A Yes.

Q What was that?

A No longer able to load containers and move them through the Port of New York without having the cargo handled at a service charge.

Q Rehandled where, at the PRMMI facility?

A Right.

Q Was this as a result of conversations had with Mr. Semack of MTM who indicated that in the PRMSA service all LTL shipments would be handled by PRMMA and not by MTM?

A I don't think he said that to us, did he?

I don't think we testified he said that to us.

Q How did you know it was necessary for you to have your cargo handled by PRMMI as opposed to MTM?

A The only show in town.

He wouldn't accept any more of ours.

Q Isn't it a fact that the only show in town was actually one carrier, PRMSA, having one tariff before the Federal Maritime Commission and MTM and PRMMI were merely components of PRMSA?

[250] They were managing companies for PRMSA but the vessels were PRMSA's vessels?

A That's my understanding but I wouldn't say merely, no.

Q What was your understanding for your conclusion that you had to bring your cargo to PRMMI as opposed to MTM?

A He wouldn't accept any more of our cargo.

It said it was too expensive.

* * * *

[251] Q And your comparison, GC-7, was prepared to determine whether, from a cost standpoint, it made more sense, and was more economic to move the Jacksonville over an ocean carrier that did not have ILA represented [252] employees or whether you should go and bring your cargo break bulk to the PRMMI facility where it would be loaded into ocean containers by ILA represented longshoremen?

A Correct.

Q So that your decision to go to Jacksonville was strictly based on dollars and cents?

A Yes.

Q And if it had been cheaper to use PRMMI and to have the longshoremen load the containers, you would have no objection?

A I wouldn't say.

Q If it was cheaper you wouldn't have brought it to the piers, to the PRMMI facility?

A If we decided to stay in business at all, yes.

Q I take it when you arranged to have containers loaded by various off-pier agents, including Pacific Terminal, that you also took into account the cost involved in having it done off pier as opposed to done by the ILA longshoremen at the pier?

A We did not consider that at all.

Q Is it fair to say if it was cheaper to have it done at the pier that would not have made any arrangements with these off-pier warehouses and trucking stations?

A I'd have to give that consideration from—we never considered it.

* * * *

[257] You asked me, sir, as to the handling of your cargo why we had not considered someone like Sealand at the pier.

And I had forgotten that tariff did provide that.

This is back before this whole business.

Always did provide for the receiving of shipments for customers.

And they gave a time frame, receive it within certain time and we will charge so much for receiving and preparation of the manifest.

Q Would that charge be greater than the cost incurred at an off-pier facility?

A Much greater.

* * * *

[262] JUDGE JALETTE: As I understand your deception defense and I may be mistaken, the consolidators being knowledgeable in the ways of this world and in the way of having to ship containers, I gather you would show that they tried to hide the fact that they were the shippers.

Otherwise their containers would come under the provisions of the rules on containers.

He would have to be—they would have to be stripped and restuffed.

That's what you want to show?

Is that it?

MR. CARUSO: No.

What did they, from what I gather, from what I have seen, in the case of Dolphin and San Juan, indicated on the shipping documents—

JUDGE JALETTE: That they were to be—they were somebody else's?

MR. CARUSO: No.

They were Dolphin but they were loading the containers not within the geographic area in which the ILA was exercising its jurisdiction.

JUDGE JALETTE: Let's—all right.

They were hiding the fact that it was within the 50-mile area?

MR. CARUSO: That's correct.

[263] JUDGE JALETTE: That was so that they could get their container through the port.

MR. CARUSO: Correct.

JUDGE JALETTE: What respects would that be relevant here?

MR. CARUSO: Well, we must remember that before the containerization—

JUDGE JALETTE: If they were going—if they were doing work for their own customers and not on behalf of the members of the shipping association, what difference does it make?

What difference does that make?

MR. CARUSO: Well, may I raise this but for argument?

But for containerization the cargo that these customers had been shipping would have been shipped through the Port of New York.

It would have been handled at the pier by ILA longshoremen.

But for containerization.

JUDGE JALETTE: Yes.

MR. CARUSO: Now, containerization comes on the scene and the ILA says NYSA will compromise with you here.

It will compromise.

[264/274] We will let you use containers.

But any cargo that originates within this small geographical area we have a superior claim to.

We have a superior claim because we have always done it traditionally before containerization came into the picture.

But we will allow you to have your containers stuffed off pier provided they are stuffed outside of the 50-mile radius of the Port of New York.

JUDGE JALETTE: Outside a 50-mile radius of the Port of New York.

MR. CARUSO: Yes.

Provided they are stuffed outside of the 50-mile radius of the Port of New York.

But with respect to the 50-mile radius, that cargo has to come down to the piers and it must be loaded by us at the piers.

JUDGE JALETTE: Excuse me.
Off the record one moment.

(Discussion off the record.)

JUDGE JALETTE: On the record.
Continue, Mr. Caruso.
MR. CARUSO: NYSA agreed.

That was the collective bargaining agreement between NYSA and on behalf of its members and the ILA, the collective bargaining agreement.

[275] Now, some point the NVO comes on the scene.

A knowledgeable person having—in Mr. Lee's case eighteen years of experience in the, what we call the domestic trade.

And that is coast-wise and inter-coastal, ports along the continental United States.

And with this experience and knowledge he goes to see Seatrain Service, Inc. and they discuss the possibility of Dolphin being used for the purpose of soliciting LTL cargo so that that cargo would not go to Seatrain's competitor, Sealand and be handled at the pier but rather would be handled off pier by Dolphin or for the account of Dolphin.

And it would move on Seatrain vessels.

Now, Seatrain did this with full knowledge that there was a collective bargaining provision to which they were a party which said that any cargo originating within the 50-mile radius of the port of New York was claimed by the ILA Seatrain was aware of it.

Dolphin was aware of it.

And Dolphin took steps to avoid that claim.

And but for those deceptive practices the ILA would have exercised the claim and the ILA would have handled the cargo at the piers.

That's our defense.

[276] And I again implore you to give us an opportunity to examine on that defense.

JUDGE JALETTE: I think it's a repitition of the defense which was made essentially in Conex.

MR. EISENSTADT: Yes, but let me point out something.

With respect to Judge Ordman's statements as to deceptive practices, I would like to note that Member Fanning in his dissenting opinion in the Associated Transport, looked to that very fact in the ports of Hampton Roads and Baltimore as a distinction whereby he, a member of the original panel, could come to the conclusion that work preservation could be and was there in those ports a valid objection of the ILA right at this point—and I'd like to note that for the record because I think right now it belongs here, your Honor.

We have before the second circuit a petition for recall of a mandate and reconsideration by the board, the very board whose precedent is being cited here, to consider whether or not similar deceptions which can be uncovered subsequent to the decision in Conext should be considered by the board to possibly reverse its decision in the Conex case itself.

I think the deceptions here and the fictions that surround the establishments of that decision is very much at the heart of the whole proceeding, not only [277] here, but in Conex as well.

I think as to—in view of everything that is happening here, in view of the fact that the board relied on Judge Ordman's finding that proof of deceptions and extraneious circumstances may have—

JUDGE JALLETTE: The board did not rely.

MR. EISENTADT: The board accepted the findings basicaly of Judge Ordman on the facts.

They differed with him on the conclusion.

JUDGE JALETTE: And said not one word in their decision about the issue of any deceptive practices.

They found the consolidated and Twin had been performing this work for years.

MR. EISENSTADT: Yes.

I have no disagreement with it.

But the fact that the board agreed essentially with the factual development of the analysis in Judge Ordman's opinion does not mean they had to refer—

JUDGE JALETTE: I am totally unpersuaded.

Whatever Judge Ordman had to say about deceptive practices died in his decision and did not obtain any life

at all by reason of the fact the board did not avert to the one way or the other.

I will not—I cannot—that cannot be construed as the board stating this would be a [278] relevant issue in determining whether or not a consolidator is entitled to work.

MR. EISENSTADT: Only the board could really know that because the board is the one that issued Conex.

JUDGE JALETTE: At this point I am in a position of having to make rulings on a case which I think follows Conex.

And all I can tell you is my construction of the Conex decision does not open the door to a litigation of deceptive practices.

MR. EISENSTADT: Is it your Honor's position that if deception were shown in Conex that the board necessarily would have arrived at the same conclusion?

JUDGE JALETTE: Yes.

MR. EISENSTADT: Could I get some elaboration of that?

I can't understand.

JUDGE JALETTE: I think the board has said that traditionally it is not the work of the ILA to stuff and unstuff containers.

Its job is to load and unload vessels.

MR. EISENSTADT: The board did say that incident to the loading and unloading of vessels was the stuffing and stripping of containers, isn't that correct?

JUDGE JALETTE: That's right.

[279] MR. EISENSTADT: In the case which was dealt wity by the board in Conex, the facts of that case, they found that there was an off-pier tradition which was constant with the similar position down at the pier, namely the incidental handling in the stuffing and stripping of containers.

Now, what if the board should subsequently find, and I don't say this is all hypothetical because right now it's in the works, but let's say the board should subsequently find there was deception, that this off-pier tradition was created and developed by the off-pier consolidators, by the use of certain manipulations.

Let's say bribery.

Let's say falsification of documents, and so on.

It does not stand to reason that that tradition wouldn't fall apart.

JUDGE JALETTE: Mr. Eisenstadt, I'll give you the answer, which is, I will not permit that to be litigated here.

You have the consolidation, you are telling me that you are trying to obtain litigation in the Conex case, it is through motion for reconsideration before the board of appeals in an attempt to get it remanded back to the board.

That will be the forum that it will be heard in the [280] board—if the board—if the court and the board undertake to do so.

I will not undertake to hear it unless the board directs me to do so.

MR. EISENSTADT: Of course, I take exception to your Honor's position.

However, I still believe that it would, for the sake of economy and efficiency it would still behoove your Honor in this proceeding to at least let it appear on the record.

Because if it should turn out that in Conex there should be a change of mind on the part of the board, then why have to relitigate this proceeding.

JUDGE JALETTE: We wouldn't have to.

The general counsel would probably undertake to move to dismiss his complaint if that were the case.

MR. EISENSTADT: I would like to share your Honor's optimism.

JUDGE JALETTE: As I have indicated, you can protect your record by making an offer of proof so that the board will have before it the proper basis for making a ruling.

BY MR. CARUSO:

Q Mr. Lee, were you present at the pre-hearing [281] conference which counsel for the respondents and counsel for general counsel were present in July of 1977?

A Yes.

Q And at that time did I not request you to provide me with a—with copies of bills of lading, select group of

bills of lading prepared by Dolphin, which would reflect —strike that—which related to movements made—movements of containers made by Dolphin which showed Dolphin as the shipper of that container?

A Yes, sir.

Q And have you collated the specific documents that I requested?

A I did.

The company has them.

Q Do you have them in your possession?

A Yes.

Q Would you produce them for me?

MR. PORTNOY: I object.

I see no relevant purpose for the production of these documents at this time.

JUDGE JALETTE: Mr. Caruso?

MR. CARUSO: You Honor, frankly I intend to use these documents for the purpose of again examining in the area of deceptive practices.

[282] JUDGE JALETTE: All right.

MR. PORTNOY: I have an objection to that.

JUDGE JALETTE: All right.

I will not direct the production of the documents on the grounds that it is for the purpose of examining in an area which I find is not relevant to the issues in the case.

MR. CARUSO: May I make an offer of proof?

JUDGE JALETTE: Yes.

MR. CARUSO: Had the documents been produced and had I had the opportunity of examining the documents, offering them into evidence and examining Mr. Lee on these documents, I would have established here that Dolphin deliberately indicated on documents presented to the steamship carriers that the origin of the container was outside the 50-mile radius of the Port of New York, and that this was done in order to deceive ILA employees at the steamship company pier facilities into thinking that Dolphin containers would not—was not subject to the rules on containers.

In that fashion Mr.—strike that—Dolphin Forwarding was able on that to obtain unrestricted movement of con-

tainers from the time it was formed in 1974 until the first time this deception was discovered in December 1974.

That is my offer of proof, your Honor.

[283] JUDGE JALETTE: Offer of proof rejected.

MR. CARUSO: I take exception.

Q I just want to ask you several other questions just to make it clear in my mind the reason why you decided to go to Jacksonville, Florida.

From what I gathered from your testimony, and you correct me if I'm wrong, you engaged in the cost comparison, the operation in New York as opposed to the cost of operating via Jacksonville, Florida.

You did that on general counsel exhibit 7, and on the basis of the fact that it was cheaper to use the Port of Jacksonville as opposed to the Port of New York, you proceeded to discontinue your operations in December 1974, in the Port of New York, and to move all of your shipments to the Port of Jacksonville, is that correct?

A The action is correct.

The terminology would be that we diverted the cargo to Jacksonville.

Q Is it fair to state that your objection to using the Port of New York was not because you were prohibited from continuing to use the steamship carriers, but rather because it was more costly to use the steamship carriers in the Port of New York.

A May I have your question again, sir?

[284] MR. CARUSO: Would you read it back?

(Record read.)

MR. PORTNOY: Objection.

That's a non-sequetor based on the present testimony that's been developed.

JUDGE JALETTE: Overruled.

MR. CARUSO: I'm sorry?

JUDGE JALETTE: Overruled.

A I can answer?

JUDGE JALETTE: Yes.

Q Yes.

A The answer is yes.

MR. PORTNOY: To what?

MR. EISENSTADT: The question.
MR. PORTNOY: Sorry about that.
Q It's also fair to state that the steamship carrier in New York, and there was only one at the time in 1974, that is PRMSA, did not indicate to you that it was ceasing business with you?
MR. PORTNOY: Objection.
It's argumentative.
MR. CARUSO: It's not argumentative, your Honor.
It's a fact.
JUDGE JALETTE: Overruled.
A I can answer?
JUDGE JALETTE: Yes.
[285] A If I recall correctly, Mr. Caruso, I was obliged to change testimony because it wasn't first-hand.
It came to me.
Would you respect, sir, that the information that came to my company did not come directly to me?
Q I'm afraid I'm lost as to what you're alluding to, Mr. Lee.
A You or Mr. Schecter, I forget—
Q I think it is going to be very confusing if you refer to incidents that occurred at the FMC proceeding because no one here other than myself and yourself are aware of those proceedings.
A That's why I'm having trouble answering your question, because what happened, and what I heard myself first-hand is two different things, right.
JUDGE JALETTE: Can you answer the pending question?
MR. CARUSO: Would the reporter read back the pending question?
JUDGE JALETTE: If you can't answer it just say you can't.
Would you read it back, please?

(Record read.)

A That question is no good.
I can't answer that.
Q Was Dolphin ever advised by PRMSA that PRMSA would not accept shipments of Dolphin to Puerto Rico?
[286] A No.

Q PRMSA is the carrier in the Puerto Rican trade in late 1974, is that right?
A Yes.
Q And PRMSA was the only carrier to Puerto Rico operating out of Port of New York in December 1974, is that right?
A Yes.
Q And PRMSA never refused to do business with you in December 1974, is that right?
A That's correct.
Q And your decision to move to Jacksonville was a voluntary decision on the part of Dolphin to do so because it was cheaper to move out of Jacksonville than out of Port of New York?
A Yes, sir.
Q Did any representative of the International Longshoreman's Association ever contact Dolphin Forwarding, Inc?
A Yes.
Q When?
A To the best of my knowledge it would have been around October or November of '74.
Q And who was this representative?
A I don't know.

* * * *

[290] Q In the period 1964 to 1968 what were the sources for Dolphin's customers?
How did you obtain customers?
A I solicited their business.
Q And what resources did you rely on for soliciting their business?
A My own.
[291] Q Did you use any lists?
Did you use any information becoming available to you to know who to go to?
A No, sir.
Q How did you go about doing it?
A I had been in business for some 18 years.
I knew the market.
I knew who the shippers were.

8 percent of the cargo moving to—for export moves to Puerto Rico, 8 percent of New England originating cargo goes to the State of Texas.

I was familiar with the people and generally those who ship to Texas also shipped to Puerto Rico.

So it wasn't too difficult for me to knock on doors to find out for sure which ones were and which ones were not.

Q And do you know where or did you learn how these people had been shipping their goods to Puerto Rico prior to your solicitation?

A Yes.

Q What did your knowledge reveal, your inquiry?

A Most of them were using another NVO.

Q Now, you are talking about the people in New England?

A Yes, sir.

* * * *

[297] Q What services do you provide to your customers as an NVO or doing business as you have been doing business since 1964?

A You said customer service.

You did not—

JUDGE JALETTE: All right.

What services do you provide to the customer?

THE WITNESS: That's what threw me off, I'm sorry.

Q Now that you understand my intent, could you answer that?

A Okay.

We go back to what an NVO is then, right?

JUDGE JALETTE: No.

Just what do you do for a customer.

That is a very simple question.

If I've got goods, I want to send to Puerto Rico, what are you going to do for me?

A I love the opportunity to sell.

I'm sure with some time I could persuade you it would [298] be very nice to use my service.

They are very good, the price is right, our attention is right.

We've got good reputation.

We are serving a lot of good customers.

JUDGE JALETTE: So far you haven't gotten a shoe out of my plant.

How are you going to get my shoes from Brockton, Mass., to San Juan, Puerto Rico?

THE WITNESS: I don't do that.

JUDGE JALETTE: Then what do you do?

THE WITNESS: I will receive your shipment of shoes at our designated facility, but not from your source.

You have to use your ICC carrier for bringing it to us.

We have no ICC authority.

JUDGE JALETTE: Do you provide any service to the manufacturer in connection with arranging for the shipment of his product from his plant to let's say Passaic, New Jersey?

A No, sir.

JUDGE JALETTE: I see.

So when do you start providing services to the manufacturer?

[299/300] A When it reaches me at the facility that we have designated.

JUDGE JALETTE: What is the service that you provide him?

THE WITNESS: At that point in time we issue a bill of lading, charge you for the service.

We load the shipment.

We move it to Puerto Rico and we deliver it.

JUDGE JALETTE: You deliver it to the point of destination given you by the manufacturers?

THE WITNESS: Yes, sir.

Q So as I gather it, Mr. Lee, you never—you or your employees never touch any of these goods, is that right?

A I or my employees.

Dolphin Forwarding, correct.

Q And all you do—not all, but what you do is you handle the paper work and the telephone communications, is that right?

A We perform common carrier service.

Q But you don't transport any of the goods, is that right?

A Yes, we do.

We are a carrier.

We are a non-vessel operating common carrier.

[301] Q But you don't actually have any vehicles, vessels or other facilities for moving that cargo, is that right?

A Dolphin Forwarding does not.

That is correct.

Q The interconnects with people by phone and by mail and so on to arrange for the movement of goods from one place to another.

A From one terminal to another.

Q Well, from the plant, let's say in Brockton—

A No, sir.

Ports only.

Atlantic ports only to all points and placed in Puerto Rico.

Q Have you operated through the Port of Boston?

A Yes.

Q When?

A When?

Q Since 1964?

A Yes.

We operate through the Port of Boston.

Q And whose facilities did you use?

Will you give me an example of how you operate through the Port of Boston?

A We would have an agent in the Boston—Port of Boston area doing the same thing that an agent is doing [302] in New Jersey and in Jacksonville, Florida.

* * * *

[305] Q From your viewpoint was Seatrain in competition with you?

A Oh, yes.

* * * *

[306] Q Mr. Lee, are you familiar with a gentleman by the name of Paul Semack?

A Yes.

Q Will you identify him, please?

A He was the vice president of Transamerican Trailer Transport.

* * * *

[309] Q Going now to the cost factor for a moment, in 1974 were you using what warehousemen's facilities for stuffing of containers?

A '74 would have been Passaic Terminal Warehouse.

Q What did it run you labor-wise to have a container stuffed?

[310] A Well, I don't know if that is for public knowledge.

But 50 cents a hundred.

Q At that time do you know what it would cost down at the piers?

A Yes.

If we could qualify for the item that was in the tariff it would have been 70 cents a hundred plus a charge for the preparation of the manifest and I've forgotten the price for that.

* * * *

[315] Q You referred to various entities that performed work for Dolphin, Passaic, Park, Public.

Are you familiar with the general nature of their business?

A Yes.

Q What is it?

A Warehousemen, distributors.

[316] Q They just—their work is not limited to stuffing and stripping containers?

A No, sir.

Q What other type of work do they do?

A Local warehousing and local distribution.

Q Having nothing to do with ocean going cargo, is that right?

A Some of it did.

If the cargo that was assigned to their warehouse it could have come from overseas and had come in by ocean carrier.

Q When cargo was delivered prior to being stuffed it was stored in the warehouse, is that right, awaiting a container or a full container load, is that right?

A Yes.

Q Are you—were you charged anything for that, that storage?
A Yes.
Q What was—was it on a daily basis?
A No.
Q Or weight basis?
A No.
It was all in the price.
It was all negotiated the price that I had already mentioned, covering everything.
[317] Our freight doesn't stay still too long or we would never keep his shoes.
Q What was your arrangement with those carriers? First they had to receive the merchandise, is that right?
A Yes.
Q Then they stored it if it was waiting for a container?
A Floored it versus storage.
Q Okay.
And then they stuffed the container, is that right?
A They loaded the container.
Q What other services, if any, have I not covered?
A Service local phone calls from customers, picking inquiries, scheduling—
Q Customers within direct contact with Passaic, let's say?
A Sure.
Our customers knew where our receiving facilities were and they may have wanted to find out the latest on schedules as to what time they had to get it there.
They may have called them for pick-up service.
They may have been called by a steamship company to find out how many loads are coming.
They may have called for some bookings.
They may have called for—they would have called
[318] They may have called for—they would have called for the necessary arrangements to get the equipment that they would need in the event that the equipment was not available to them.
They would give us a loading manifest and they would prepare in the mailing the necessary material that we would need at destination to check the outturn, to make sure it was correct.

Q All those services were performed by the warehousemen, is that right?
A Right.
It would be the services that we would perform ourselves if they were our facilities and our people.
It is a totally—all-service. It is an agency service.

* * * *

[327] Q Can you give us an example of freight all kinds?
A Yes.
Any item—items of three or more, none of which exceed 70 percent of the total and no component part which would exceed 25,000 pounds in a 40-foot container.
Q Now, what—as compared to the A.Q. rate, how would that compare?
A That would be lower.
Q Considerably lower?
A Depends upon the mix.
Q What would be the next higher cost type shipment?
A The truckload application on the specific items.
Q What would that consist of?
A The next highest—well, we are talking about now a non-qualifying freight all kinds load.
Say a shipment—a component load exceeded 5,000 pounds or certain descriptions exceeded 70 percent of the lading or we only had two items, didn't have three, then we would have to abide by the tariff and pay that.
It could be more than the freight all kinds.
We don't do that.
Q Why not?
A It's too expensive.
[328] Q You limit yourself to the A.Q. and the FAK, is that right?
A Yes.
Q Now—
JUDGE JALETTE: Do you have much more?
MR. EISENSTADT: Not much more.
Q At the time that Dolphin went into business in '64 were the A.Q. and the FAK in effect?
A Yes.

Q From your prior experiences do you know when the FAK first came into existence?

A It came in when they first published their tariff to Puerto Rico, the initial tariff.

Q That was about when?

A Sir?

Q That was about the—about when, date-wise?

A '63, somewhere in there, 1963.

Q That's when the FAK as far as you know—

A As far as Seatrain was concerned.

I was familiar with that tariff.

Q Were you familiar with any other tariffs?

A Yes.

But not to Puerto Rico.

Q Let me get clarification on that.

Were you familiar with other tariffs but no other Puerto Rican tariffs?

[329] A That's correct.

MR. EISENSTADT: Just one second.

(Pause.)

Q You just testified that you are familiar with the Seatrain tariff to Puerto Rico.

Do you know whether any other carriers were offering FAK in the Puerto Rican—in Puerto Rico and run at that time?

A At that time I do not recall.

Q Do you recall when other carriers were offering FAK rates to Puerto Rico?

A It is such a common practice, I didn't know that one did and one didn't.

I would have presumed that they all did.

Q Now, as a result of the FAK rate, were you receiving any lesser services as a consideration for getting that more favorable rate?

A Yes.

Q In what sense?

A We had to do the loading and the unloading.

Q But other than that?

A No.

Q There was no other compensating factor?

A No, sir.

It's an item in the tariff.

[330] Either it qualifies or it does not.

Q So you as a consolidator were able to obtain FAK by doing the loading and unloading?

A Yes.

Q Now, you expressed familiarity with the FAK rate in the Seatrain tariff.

Are you personally familiar with how that FAK rate was derived?

MR. PORTNOY: Objection.

What difference does it make?

JUDGE JALETTE: Objection sustained.

MR. EISENSTADT: Your Honor, consolidators were using a certain rate.

There must have been some basis for it.

I think we have a right to find out what it was.

JUDGE JALETTE: What difference does it make how it was derived?

MR. EISENSTADT: The FAK rate takes into consideration certain things.

The witness just testified that he has to load and unload it.

That was a consideration for obtaining the FAK. It should be obvious then that the ability of the consolidators to find was directly related to the ability to get an FAK rate or an A.W. rate or some rate that enabled them [331] to be competitive to establish a tradition.

MR. PORTNOY: has no bearing on the issue of whether or not their customers are subcontractors.

MR. EISENSTADT: I am not even talking—

MR. PORTNOY: I don't think it is in dispute that the FAK rate is opened to anybody who qualifies under the ocean tariff.

I don't think there is any dispute—

JUDGE JALETTE: You are getting away—he's indicated that he gets the FAK rate and he gets it because he can unload the container.

How they arrive at the FAK rate, which was your last question, seems to me to be irrelevant.

MR. CARUSO: The FAK rate presumably was a creature of the steamship carrier.

The steamship carrier developed the rate.

If the steamship carrier developed the rate and the rate was lower than other rates because the physical handling of the container—of the contents of the container was going to be done off pier, then it would seem to me that this in effect was a conscious decision by the steamship carrier to offer this rate, thereby giving an inducement to have the contents of the container stuffed off pier, saving the steamship carrier the cost of him doing it on the pier.

[332] [In effect the steamship carrier is subcontracting the loading and unloading of that container off pier.

You don't have—

JUDGE JALETTE: I am not persuaded.

I understand your position.

I don't agree with it.

MR. EISENSTADT: Your Honor, at this point, since we are concluded from examining the witness at this point, I would like to make an offer of proof.

That if counsel were permitted to examine the witness, if counsel were permitted to develop the evidence in this area, it would show that the FAK rate was developed at a point in time which was consonant with the development of containerization.

That the handling of less than container loads which the ocean carriers found either burdensome or uneconomical, propelled them to develop a rate called an FAK rate, which induced and solicited the interest of off-pier—of persons to develop off-pier facilities and off-pier arrangements such as in this case Dolphin, San Juan and other off-pier consolidators, and which develop the so-called tradition of the off-pier consolidator as a direct or indirect conscious action of the ocean carriers who are members of NYSA.

* * * *

[335] Q (By Mr. Eisenstadt) Mr. Lee, when you arranged for the pick-up of cargo destined to be transported by ocean-going vessel from a manufacturer or

other so-called customer, I believe you indicated that the customer would use his own—make his own arrangements to get it to your facility, your agent's facility, is that correct?

A To the end of the question.

You said that we arrange, we do not arrange for them, no.

Q But it would call then, nevertheless, for the customer to take care of that aspect of the movement, is that correct?

A The customer would call his carrier, yes.

Q All right.

* * * *

[341] Now, in order to get this matter straightened out, let's take this whole process step by step from the point where you learn from customers that shipments are going to, let us, Passaic warehouses.

At that point you need a container, is that right?

A Yes, we need a container.

Q Okay.

How do you go about obtaining that container?

A All right.

Passaic terminal warehouse could have the equipment in possession at its warehouse.

Q When you say equipment, could you be more specific?

A Trailers. Trailer containers.

Q How would it have gotten there?

A Shipment has been imported—

JUDGE JALETTE: Let's assume it doesn't have any.

Q Let's start fresh.

[342] A All right.

It then runs to the facility of the shipping company as to whether they locate a pool of their location, trailers, containers, drawing that equipment on the permit of the booking number.

Q Now, stop there and go back a bit.

Who arranges for obtaining the container?

A The agent.

Q What agent?

A Passaic Terminal Warehouse.

Q You tell Passaic that a container is needed, is that how you do it?

A No.

They know they need one.

Q Automatically?

A Yes.

Q Do they obtain the container?

A Yes.

Q Over your name?

A Yes.

Q All right.

A As our agent.

Q How do they do this?

A They dispatch their tractor—

JUDGE JALETTE: That's the physical way.

[343] We don't care about the physical way they do it.

Q We know they have to bring it there.

What procedures do they go by?

What papers have to be drawn, what telephone calls, if any, have to be made?

How do they go about it step by step, within your knowledge?

A They have been given the booking number.

Q By whom?

A They could get it themselves, by calling up the shipping company.

Q What does that booking number consist of? What does it represent?

A It's a series of numbers which has meaning to the steamship company that it covers one or more containers, trailers, which go aboard a certain vessel.

Q Mr. McHugh testified yesterday, if I recall correctly, that the booking number meant two things to him, one thing it meant getting a container.

The other thing it meant that there was going to be a place aboard a vessel.

Does that mean the same thing to you?

A Yes.

Q Could you conceive of a booking number meaning only obtaining the container but not having a place to board a [344] vessel?

A No, sir.

Q Well, in your experience have you ever had that happen to you, that a booking number is given but you didn't have a place to board a vessel?

A Yes.

We have missed some sailings.

Q You missed the sailings.

Had you been on time you would have been aboard the vessel?

A Yes, sir.

Q All right.

We have the booking number.

You don't obtain the booking number, your employee does necessarily obtain that booking number, is that right?

A Not necessarily.

Q So, Passaic gets a booking number.

Then what does it do?

A It knows it needs equipment because it is receiving cargo consigned to move via Dolphin to Puerto Rico.

It could be a Monday.

It could be a Tuesday.

He knows from momentum how much equipment, trailers he is going to need.

He has a booking number.

[345] There has been an estimate that's made as to how many trailers will be needed to service the flow of cargo in a given week.

Q He will have to get that from you, won't he?

A Unless he has called and got it himself.

Q From your customers?

A No.

From the steamship company.

Q How does he know how much cargo is coming in?

That's what I meant.

A That's what transportation is all about.

We do know based upon performance in the past.

Q He knows so many shoes are going to be coming in because every week a certain number of shoes come in, is that what you mean?

A That's an example.

Q Now he has got a booking—he knows the cargo is coming in.

And a booking number is obtained.

What happens then?

A A driver is dispatched.

He is given that booking number.

He goes to the—

Q Just before that point.

Under what authority does he obtain that container? [346] I mean, does the container just willy-nilly go to anybody that requested a booking number?

A Not without the booking number.

Q What entitles him to a booking number?

A A need, you request it and it is given to you.

Q If I called down to Seatrain or Sealand they are going to give a booking number? They don't know?

A If they—

Q They would give me their container, they will give me maybe even a chassis with it just because I call for it?

A Yes, sir.

Q Without security, without anything?

A That's right.

They won't give it to you without security, but they will give it to a carrier—

Q Why?

A (Continuing)—who has an agreement on interchange of equipment.

An equipment interchange agreement that the motor carrier has.

Q What is this interchange agreement consist of, as far as you know?

A Yes.

This depends upon what has been negotiated between the steamship company and the specific motor carrier.

[347] It does vary.

But in general it is for a small activity on a one for one basis, which we refer to, they will say, as the carrier has already furnished services to show that it qualifies to protect the equipment containers in the event it is damaged while it is in their care and custody.

And the interchange agreement form is endorsed by both the driver and the dispatcher on the pier, and there is outlines as to what equipment looks like, what marks, a hole here, a dent there, a slash in his tire.

Q Is there a master interchange agreement that covers the ongoing relationship between the carrier and the—I am talking about the ocean carrier and the motor carrier?

A I wouldn't know that, sir.

Q So, each time he goes down he gets a—they sign these slips and the equipment is transferred to the carrier, is that right?

A Yes, sir.

Q All right.

Now, as I understand it, you don't have any trailers, is that right?

A Yes, sir, we do not.

Q You do—

A Yes, sir, we do not.

Q Okay.

[348] Are you party to any interchange agreements?

A No, sir.

Q With any carrier, any ocean carrier?

A With no carrier, period.

Q All right.

Now, Passaic has obtained a container.

What does it do?

What does it do with the container?

A It places it at the facility and commences to load our cargo.

Q Now, under that interchange agreement it entitles or gives the motor carrier, whether it is an independent or whether it's a subsidiary of Passaic or son, gives them the right to take that container and move it away from the pier, right?

A Yes, sir.

Q Does your name figure in this at all?

A Yes, sir.

It is our booking number.

Q Your booking number?

A Yes, sir.

Q You mean that when Passaic calls in to Seatrain or Sealand or triple L, whoever it might be, that booking number is not given in Passaic's name?

A That's right, it's not. It's Dolphin's name.

[349] Q He says I want a container, booking number for Dolphin, is that how he does it?

A Right.

Q But Dolphin never gets that container?

A That's correct.

Q Because Dolphin has no equipment, has no interchange agreement?

A That's correct.

Q Now, when he gets back to the warehouse it is handled by, in this case, Passaic, right?

A Yes, sir.

Q Passaic's employees get the cargo in position and they stuff the container, right?

A Yes, sir.

Q Now, they put a seal on that container, is that right?

A Yes.

Q Whose seal is put on that container?

A Could be their own.

Q Well, a seal is a very special device, isn't it?

A Yes, it is.

Q What does it signify?

What does it—

A It gives—

Q (Continuing)—mean?

[350] A First of all, it gives a series of numbers and they are a series.

It could be 1077, 1078, 1079.

And if they have purchased the seals with the imprinting of their own name, they could have PTW, 1770, PTW—

Q Would it say ever DOL 1770?

A No, we have none.

Q You have no seals?

A No, sir.

Q Somebody looking at that container would see the Seatrain logo, they would look at the seal, the PTW seal?

A A seal, anyway.

Q Or a seal.

But what—that seal number is given by whom?

Where do they get the seals?

A Most carriers have these on a ring so that the next one in sequence comes off.

It is their ring.

If it is their series of seals, and they apply this to the doors on the trailer containers.

JUDGE JALETTE: These are the common carriers?

THE WITNESS: Yes, sir.

MR. EISENSTADT: I didn't hear that.

JUDGE JALETTE: Common carriers.

[351] Q The common carriers have the seals?

A Yes.

Anybody can buy seals.

You could buy some with your name on.

There are companies that are in business—

Q There are also seals without any designation on it except numbers?

A Just numbers, that's right. True.

Q Just numbers.

Now, the container is then transported down to the pier by whom?

A By the trucking company.

In this case, not necessarily, but it could be PTW that did the trucking.

They have a trucking division, public warehouse—

Q It's a subsidiary?

A It's a subsidiary, yes.

Q And they take it down to the pier, the bill of lading with the manifest?

A Not necessarily.

Q Not necessarily a manifest?

A They might just go in with a dock receipt for the purpose of lodging the equipment and—lodging the container and getting a receipt for it.

Q All right.
[352] That receipt is given to him?
A To the receivers on the pier.
Q All right.
But do the receivers on the pier sign anything?
A Yes.
Q Do they acknowledge receipt?
A Yes.
One copy is retained by the driver.
Q And that dock receipt signifies what, that they have obtained a container from Dolphin?
A Yes.
Q Not from PTW, but from Dolphin?
A That's right.

* * * *

[403] VICTOR SANTOS,

having been first duly sworn by Judge Jalette, was examined and testified as follows:

JUDGE JALETTE: Be seated, please.
Give your name and address to the reporter.
THE WITNESS: My name is Victor Santos.
I live in 247 Montclaire Avenue, Newark, New Jersey.

DIRECT EXAMINATION

BY MR. PORTNOY:

Q Mr. Santos, what is your occupation?
A My occupation is the regional managing of San Juan Freight Forwarders, Transportation Company.
Q And when were you first employed by San Juan?
A The year 1973, sir.
Q And where was your first place of employment?
A In Puerto Rico, sir.
Q And after you were first employed did you subsequently move to New York?
A That's correct, sir.
Q And about when did you move to New York?
A Early part of 1974.

Q And would you tell us what business San Juan is engaged in?
A San Juan Freight Forwarders is engaged in the NVO [404] sea business which is a non vessel operated carrier.
Q And where is the principal office of San Juan located?
A The headquarters office of San Juan Freight Forwarders are located in Carolina, Puerto Rico.
Q And does San Juan also have an office in New York?
A Yes, sir.
Q And that is located at 601 West 28th Street?
A That's correct, sir.
Q When you first came to the New York office, could you tell us what groups of individuals San Juan employed in New York?
A In New York at that time we employed personnel, three, which is clerical administration.
Q And any sales personnel there?
A When I moved to New York I became one of the—involved in sales also.
Q Now, could you describe how San Juan, prior to September 1, 1974, move containers, what functions it performed?
A Well—
JUDGE JALETTE: Before what date?
MR. PORTNOY: September 1, 1974.
A They were using the facilities of different carriers like TransAmerican Trailer Transport, TTT, [405] Sealand and in very few occasions Seatrain.
Q Okay.
Those are the ocean carriers.
And you utilized containers in your business, is that correct?
A Containers or trailers.
Q Okay.
Who stuffed those containers?
A We use the company stevedoring called Penn Industries.

Q Do you know whether Penn Industries had a union contract with any labor organization?

A Yes, sir.

Q With what labor organization?

MR. EISENSTADT: Objection.

JUDGE JALETTE: Overruled.

A The union labor organization that represents Penn Industries is ILA, offshore.

Q After the container was obtained by the carrier and it was stuffed by the employees of Penn Industries,—withdraw that.

What was the arrangement between San Juan and Penn Industries with respect to the stuffing of containers?

A Penn Industries will receive, sign for and load into containers or trailers all the merchandise shipped by shippers at different locations in the United States to [406] the terminal of San Juan Freight Forwarders.

* * * *

Q When the containers were stuffed at 601 West 28th Street, what happened to the containers afterwards?

A They were documented by San Juan Forwarders and moved by a common motor carrier to the facilities of the ocean carrier.

Q And what happened to them there?

A At the facilities of the ocean carrier they were put on the vessel to be transported to Puerto Rico.

[407] Q Now, before they were lifted aboard the vessel, were the trailers or the containers ever unstuffed by ILA labor and restuffed into another container.

A Yes, sir, they were.

Q What percentage of your trailers or containers were ever—were subjected to that unstuffing and restuffing?

A To the best of my knowledge, at least 80%.

Q Now—

MR. EISENSTADT: Pardon me, can we have a time frame for this?

Q During what period of time was this going on?

A This started from '73 to '74.

JUDGE JALETTE: Through '74?

THE WITNESS: Yes.

* * * *

[410] Q Now, you say that you have—now, did there come a time when you could not obtain any containers from MTM or TTT?

* * * *

[412] THE WITNESS: Yes, sir.

At the latest part of 1974 we began having problems acquiring the availability for containers for San Juan Freight Forwarders from MTM.

* * * *

Did you ever have a conversation with Mr. O'Brien concerning the availability of containers?

A Yes, sir, I did, many occasions.

Q In the latter part of December, 1974, January, 1975, did you have a conversation with Mr. O'Brien concerning the availability of containers?

A Yes, sir, I did.

Q Can you fix the date?

Can you tell us the date of that conversation or the first conversation in that regard?

A The early part of January, 1975, I was informed by Mr. O'Brien that we will no longer have the availability of bookings or trailers for San Juan Freight Forwarders.

Q Will you tell us whether or not you called Mr. O'Brien or he called you?

[413] A The beginning—I made the call, because we used to call for booking numbers.

Q Okay.

You made the call.

Okay.

Who did you call?

A I called Mr. O'Brien.

Q And what did you say to him and what did he say to you?

A I requested booking for five spaces on the next available vessel.

And he informed me that—at that time that we could have the bookings but not the trailers.

Q What did you say to him?

A I asked him to explain the reason why we were not made the containers available to us.

Q And what did he say?

A He said I will have to see Mr. Paul Semack.

Q Anything else said in this conversation?

A Yes, sir.

MR. EISENSTADT: Excuse me, "I will," meaning who will have to see him, Mr. O'Brien or the witness would have to see Semack?

THE WITNESS: I will have to, that Mr. Santos will have to see Mr. Semack.

[414] BY MR. PORTNOY:

Q Anything else said during the conversation?

A He also informed me that the LTL facilities of MTM were being transferred to the Port of Elizabeth, and that Mr. Semack will explain to me further.

Q And did you talk to Mr. Semack?

A Yes, sir.

I called—

Q Hold it.

Did he—was this in person or by telephone?

A By telephone.

Q And did he call you or did you call him?

A I called him.

Q And do you remember the approximate date of this phone call?

A It was around the 10th or the 12th of January.

Q All right.

And what did you say to Mr. Semack and what did he say to you?

A Well, I asked Mr. Semack why San Juan Freight Forwarders cannot get any more bookings.

And he told me that he was being fined by the ILA, and also that the LTL facilities or MTM were being transferred to Port Elizabeth, and that we should contact the management of PRMMI in order to get any equipment.

[415] Q Did—

MR. EISENSTADT: Excuse me.

Equipment—

THE WITNESS: What I mean by equipment is containers.

Q And was anything else said during this conversation, do you remember?

A Not that I remember, sir.

Q Okay.

A That I remember.

Q And did you attempt to contact PRMMI at Port Elizabeth and Mr. Semack had suggested?

A Yes, sir, I did.

Before I did contact PRMNI, I informed my boss, Mr. Juan Santos, of the events.

Then I did contact PRMMI facilities of Mr. Joel McGurr.

Q Do you know what his title is, if you can tell us?

A No. I don't know.

Except—I don't know exactly his title.

But I do know he was within the operation facilities.

Q Okay.

What did you say to Mr. McGurr and what did he say to you?

JUDGE JALETTE: How do you spell McGurr, do you know?

THE WITNESS: McGurr is spelled M-c-G-u-r-r.

[416] Q Will you tell us what you said—

A I asked Mr. McGurr if we could get any containers from PRMMI.

At this time he informed me that the only way that he could move our cargo will be in an LTL basis.

By this he meant, he said, that we will have to bring our containers to their LTL facilities in Port Elizabeth where they will be off-loaded by members of the ILA and loaded by members of the ILA into the PRMMI containers.

Q What does off-loaded mean?

A It means the cargo that was in our container will have to be taken off one container and put into another container.

MR. CARUSO: Your Honor, may I have a point of clarification.

When this witness uses the term "our container", is he referring to the ocean container or the trailer of a truck?

JUDGE JALETTE: Let me make sure I understand.

Did Mr. McGurr tell you that PRMMI would furnish a container to you provided after you loaded it you brought it to Port Elizabeth?

THE WITNESS: No, sir.

Mr. McGurr informed me that he will transport our cargo if we brought it in to Port Elizabeth in our containers, [417] there they will be off-loaded from our containers and put into their containers.

JUDGE JALETTE: But you didn't have any containers.

THE WITNESS: No, sir.

JUDGE JALETTE: Mr. McGurr—did he know you had none?

THE WITNESS: Yes, sir.

MR. EISENSTADT: Your Honor, I think we are back where we started.

He says from our containers into PRMMI containers.

Our containers, can we get a clarification of what our —what work—

JUDGE JALETTE: He didn't have any.

MR. EISENSTADT: What does "our containers"—

JUDGE JALETTE: He is just repeating what was said.

BY MR. PORTNOY:

Q Now, would you tell us, did Mr. McGurr explain to you how you were supposed to get containers?

A Yes, sir.

He said we are supposed to lease them from the outside.

Q From the outside.

And did you in fact lease containers from the outside?

A Yes, we did.

Q From whom?

A From I.W. Leasing Company in New Jersey.

[418] JUDGE JALETTE: What was the name of the company?

THE WITNESS: I.W. Leasing.

Q And could you tell us when you began leasing containers from I.W. Leasing Company?

A We started leasing containers from I.W. Leasing around the 27th of January, 1975.

Q And what did you do with those containers that were leased from I.W. Leasing?

A We brought—we load them with freight at our terminal and deliver them to LTL terminal in Port Elizabeth belonging to PRMMI.

Q What happened to them there?

A They were off-loaded by ILA members and loaded into PRMMI containers.

Q Were the containers that you obtained from I.W. Leasing ocean containers or some other containers?

A They were actually seaworthy containers.

MR. CARUSO: Sorry.

Could that be repeated, the answer?

JUDGE JALETTE: They were seaworthy containers.

MR. CARUSO: Seaworthy.

Thank you.

BY MR. PORTNOY:

Q And I may be repeating myself, I beg your Honor's indulgence.

[419] But, how long did you lease these containers from I.W. Leasing?

A We leased them from the latest part of January to the latest part of May, 1975.

Q Now, in the latter part of May, 1975, what happened then?

A Then we decided to start shipping out of Jacksonville, Florida.

* * * *

[420] A I inquired from Mr. Schulein the reason why we were not being furnished containers.

Q And what did he say?

A He said that the reason why was because they were being fined by the ILA for every container that was loaded at a pier terminal by the consolidators.

* * * *

[422] Q You testified before that you were involved in sales in New York?

A That's correct.

Q And will you tell us, who did you solicit?

A We solicited on prospective shippers to Puerto Rico.

Q How did you go about it?

A The way in which San Juan Freight Forwarders does it, we usually start it in Puerto Rico visiting the buyer, and he will request a routing via San Juan Freight Forwarders.

Q Did any ocean carrier help you to generate business from your customers?

A No, sir.

Q Okay.

* * * *

[428] Did you learn at that time or thereafter where the LTL cargo came from or it eminated from?

A Yes.

Q Could you tell us from what locations that cargo came?

A Well, it was explained to me that we will have to generate the cargo and we will have to go out and sell our services in order to obtain it.

[429] Q Yes, but until the point—let's go back.

I realize the question might have been a little broad.

Let's take the time of the orientation.

At that time did Mr. Juan Santos explain to you where the cargo had been coming from?

MR. PORTNOY: Objection.

A The same—

JUDGE JALETTE: Overruled.

MR. EISENSTADT: Go ahead.

A It will be the same answer, sir.

Q Go ahead.

A Because, you know, he explained to me that it was up to the—to us—to the sales people to generate the cargo from different shippers.

* * * *

Q Was that—according to the information that was conveyed to you was that—excuse me—was the cargo

being solicited in the U.S. as well as in Puerto Rico generated as you put it?

[430] A Solicited as you put it, sir, would be done in both places but mostly in Puerto Rico.

Q I see.

Where was it coming from in the U.S.?

A All over the states.

Q Could you give us some locations?

A Well, we had—we still have freight coming from Massachusetts, Chicago, Wisconsin, Ohio, New York, New Jersey, Connecticut, Maryland, South Carolina, North Carolina, Florida, Georgia, from all those points.

Q Now, cargo—let's restrict ourselves at this point to cargo coming—the cargo that eventually goes over the docks in the Port of New York.

A Yes, sir.

Q Where does that cargo—from which of those locations that you just mentioned or others that you might not have mentioned has cargo come that reached New York?

A It actually again comes from all over the places—it depends on the shipper, which way he chooses for his land move.

It could be—he can route it to New York or route it—now, at the present time the Baltimore Terminal receiving station or Jacksonville or Miami receiving station.

Q Let me go back over my question because I don't [431] think it was fully understood.

Cargo coming into New York could come from where?

JUDGE JALETTE: He's answered from all the states he mentioned before it may come to New York.

Q Could it come from Massachusetts?

A Yes, sir.

Q From Ohio?

A Yes, sir.

Q From Chicago?

A Yes, sir.

Q Now, how would that cargo come to you?

What form, would it come by motor carrier, in a container or what form would it come?

A By any motor carrier with the exception of Chicago, sir.

Q Would you explain what the exception is?

A The exception is the fact that we do have a receiving station in Chicago.

* * * *

[436] Q Now, you said a short while ago that some of the containers coming in were not full.

Where do these containers go?

A They were in our terminal to be finished—filling it up and then they were sent to the pier as if it came from the terminal in New York.

* * * *

[437] JUDGE JALETTE: So it is the Penn Industries that is doing your stuffing, as you described earlier?

THE WITNESS: Yes, sir.

* * * *

[439] Q How did the LTL cargo that was loaded into containers at the premises which you described, how did it get to the—to the Erie Lackawanna building?

A By motor carrier.

* * * *

[443] Q Mr. Santos, you mentioned that you were able to get booking numbers from the ocean carriers, I believe Mr. Obrien, and from others.

When you pay those booking numbers, that entitled you to obtain a container, is that right?

A That's correct.

Q Did San Juan send somebody down to get those containers?

A My answer to this will have to be—actually San Juan would have to call a motor carrier because the fact is a motor carrier doesn't know San Juan needs a truck.

But the motor carrier was—in fact, designated by the ocean carriers because they were the ones that had [444] the interchange contract with them, not us.

* * * *

CROSS EXAMINATION

[446] Q In the course of your direct testimony, Mr. Santos, you stated that in the 1973-74 period there had been a rehandling of containers at piers—taking out of one, putting into another.

Do you still stand by that testimony?

A Yes.

Q When did this begin, as far as you can recall?

A I have no knowledge exactly when it began.

Q Within your own experience?

A Okay.

Within my own experience—the fact that I was working for San Juan Freight Forwarders, and I was informed of most of the happenings and events of the company, I was obviously aware of the fact that they were stripped in New York even though I was in Puerto Rico.

Q When it arrived—when a container arrived in Puerto Rico was there any manifestation of this?

[447] A Yes, sir, on the bill of lading that was given to us by the steamship company in Puerto Rico stated whether the container had been transferred or not.

Q When did you first see such a notation or marking on a bill of lading?

A This would be in the year 1973 when I was in Puerto Rico.

Q Can you give us an approximate month?

A October, November, December.

Q Of 1973?

A Yes, sir.

Q Did this continue when you came to New York, New Jersey area?

A Yes, sir.

Q All right.

And it persisted, is that right?

A That's correct.

* * * *

[449] Q My question is if you know it was going to be restuffed, why did it go down to the pier in containers?

A We—we are paying the company to do the work of loading our containers.

These people are paid for all the weight that moves in our platform—in our platform.

We had the facilities, so we fill up the container and send it to the pier.

The reason why we didn't take it down as an LTL is because the functions of San Juan Freight Forwarders is to consolidate.

* * * *

[454] Q (By Mr. Eisenstadt) Mr. Santos, what are the functions of a consolidator as far as San Juan is concerned within your knowledge?

A The—our function would be to receive freight from different shippers from different points and to consolidate it or merge it into one container and ship as one shipment.

Q Now, you testified that you hired Penn Industries to perform that function, correct?

A San Juan Freight Forwarders did.

Q San Juan Freight Forwarders, I didn't mean you, personally.

* * * *

[457] Q In addition to the stuffing of the containers what functions do you perform for your customers for handling the documentation with respect to the movement of the LTL merchandise?

A San Juan Freight Forwarders as an NVO gives the customers in the first place which we are very proud of, sir, as the personalized service, we attend to their needs in person.

Second, we give them a choice of handling the way of payment, to be either paid by the consignee or the consignor.

Third, we deal with banks in Puerto Rico.

We accept the sight drafts and letters of credit.

And also we perform—we can give them exactly where the freight is at within 30 minutes.

Q Okay.

As far as the handling of documentation involving that goods, what do you do?

A I beg your pardon, sir?

Q The paper work involved, what paper work do you perform?

A We issue the shipper a bill of lading.

[458] Q Do you make arrangements for the delivery of the LTL to your premises or Penn's premises here in New York?

A No, sir.

Q Who handles that?

A That's either done by the shipper or by—I guess—I suppose the salesman from the motor carrier that goes over there and solicits that freight.

* * * *

[472] Q During what period of time was San Juan dealing with MTM?

A MTM?

Q Yes.

A San Juan dealt with MTM from the fall of 1974.

Q Until?

A In other words, we acquired trailers from MTM I would say September, October, November, December of 1974.

Q And how long did that continue?

A It continued—it lasted until the first part of January.

Q Of 1975?

A That's correct, sir.

[473] Q And after that point you were sent to PRMMI, is that right?

A That's correct.

Q At that point in time you were told—is that correct—that all LTL would be handled by PRMMI, is that right?

A That's correct.

* * * *

[476] Q You mentioned there was a salesman in the—in your offices on 28th, correct?

A Yes, sir.

Q You do some selling yourself, is that right?
A Yes, sir.
Q How do you do the selling, by phone or in writing?
A By all means, sir, phone, writing, personal contact.

* * * *

[478] Q The sales that are resolicited by purchasers of your services that are solicited from your headquarters, are they directed at persons within the metropolitan New York-New Jersey area?
A Not necessarily, sir.
Q Where else would they be directed or are they directed?
A Can you give me the original question first?
Q Where do you look for customers?
Where do you solicit customers?
A Well, all over the United States and Puerto Rico, sir.
Q But including within the 50 miles of the Port of New York?
A That's including the port, sir.
Q Are these basically manufacturers?
A Not necessarily, sir.
Anybody that moves or ships or sails in the Puerto Rico market.
JUDGE JALETTE: Manufacturers, jobbers, wholesalers?
THE WITNESS: That's correct, sir, anybody.

* * * *

[485] MR. CARUSO: I ask that these documents be marked as Respondent's NYSA Exhibit 2.
JUDGE JALETTE: What do they purport to be?
MR. CARUSO: These purport to be six bills of lading on Sealand bills of lading forms indicating shipments by San Juan Freight Forwarders, Inc. on board Sealand vessels from the Port of New York to the Port of San Juan, Puerto Rico.
These shipments took place at various times in calendar years 1973 and 1974.
JUDGE JALETTE: Well, let's mark them Respondent NYSA 2A through F.

* * * *

[486] Q (By Mr. Caruso) I show you Respondent NYSA Exhibit 2A through F.
I ask you whether you recognize them.
A Can you show me the dates on here, sir?
(Mr. Caruso indicates)
A Right.
Q I am just asking you whether you recognize the documents.
A Just as a Sealand bill of lading showing the original carriers—
Q Do you recognize them?
A Yes, I do.
Q You do?
A Yes.
Q Would you briefly identify them?
A Identify them as being from San Juan Freight Forwarders.
JUDGE JALETTE: What are they?
Q What are they?
A Ocean bill of ladings.
Q Are these documents prepared by San Juan Freight Forwarders?
MR. PORTNOY: Objection.
[487] What is the relevance of this?
MR. CARUSO: It goes to our deception defense, your Honor.
JUDGE JALETTE: Make your offer of proof.
Mr. CARUSO: I offer these exhibits into evidence, your Honor.
The witness if asked to identify then would identify them as bills of lading for shipments by San Juan Freight Forwarders aboard Sealand vessels during 1973 and 1974.
The witness would also testify that these documents represent all of the containers moved by San Juan Freight Forwarders on board Sealand vessels during calendar years 1973 and 1974.
The witness would also testify that these bills of lading were prepared by San Juan Freight Forwarders, Inc.
And the witness would further testify that on each bill of lading as reflected on each of the bills of lading,

the address or the origin of the container would be indicated at—as Chicago, Illinois.

The witness would further testify that the containers to which these bills of lading relate were either fully loaded at San Juan Freight Forwarders Facility in New York or partially loaded at that facility in New York before [488] being trucked to the Sealand pier for loading on board ship.

From this we would then show that San Juan Freight Forwarders was engaging in deceptive devices indicating that the origin of these shipments was outside the 50-mile radius of Port of New York in order to avoid certain contractual provisions that were in effect in the Port of New York in the collective bargaining agreements between New York Shipping Association and International Longshoremen's Association.

JUDGE JALETTE: Your objection to your examination is sustained and respondent Exhibits 2A through F are rejected.

They may go into the rejected exhibit file.

* * * *

[490] Q Yet you also testified that this first occurred in October 1973, almost—more than six months after this orientation period.

Can you explain how Mr. Santos knew of the stuffing and stripping if it had not been done already?

A I believe my answer was during the year 1973.

Q When were you first made aware of the stuffing and stripping that was occurring at the piers in the port of New York?

A The fact is, you know, when you are employed in a company you go through a training program any company will do that.

My position in Puerto Rico was as a salesman.

Later in 1973 I started being trained to be—to become—to come to New York.

Late 1973 when I was informed of the problems that I would have to cope with in New York—

Q When were you informed?

A First part of 1974.

But by that time I was aware of the fact that in 1973, latter part of 1973, we were being rehandled at the [491] pier.

Q And in—prior to September 1, 1974 I take it that all of the San Juan shipments were being—that were destined for Puerto Rico were being moved through the Port of New York, is that correct?

A That's correct.

Q And this would be true whether the cargo within these shipments originated in Chicago or Baltimore or Ohio or where-have you?

A At that time they were all moving out of the Port of New York, yes, sir.

Q If a container that was fully or partially loaded at your facility within the area of the Port of New York, namely on the west side of Manhattan, West 28th Street, if that container was trucked to the pier, would the documentation that accompanied that trailer indicate San Juan's address was 601 West 28th Street?

MR. PORTNOY: Objection.

JUDGE JALETTE: Sustained.

MR. CARUSO: May I make an offer?

JUDGE JALETTE: Yes.

MR. CARUSO: I would offer that if I were permitted to answer that question and a series of questions thereafter, that this witness would testify that it was the practice of San Juan Freight Forwarders to indicate that all [492] shipments moved by San Juan Freight Forwarders regardless of the ocean carrier that was being used whether it was Sealand, Seatrain or TTT that all of these shipments would have been shown to have originated outside the 50-mile radius of the Port of New York, namely at San Juan's facility in Chicago, Illinois.

JUDGE JALETTE: Your offer of proof is rejected.

Q Beginning in October 1973 you testified that the shipments of San Juan were being stuffed and stripped at the piers, is that right?

MR. PORTNOY: Objection.

He's misquoted the witness' testimony.

JUDGE JALETTE: Restate the question.

Q You testified beginning October of 1973 the shipments of San Juan Freight Forwarders were being stuffed and stripped at pier facilities by ILA longshoremen, is that right?

A Yes, sir.

Q What pier facilities are we referring to?

A To the pier facilities of the ones I had knowledge of was the Staten Island facilities of the Port of New York.

* * * *

[496] Q Were you told by Mr. Santos of any conversations he had with TTT officials in—relating to the period May 1, 1974 to September 1, 1974?

MR. PORTNOY: Objection.

JUDGE JALETTE: Sustained.

Q On September 1, 1974 is it a fact that the Puerto Rican Maritime Shipping Authority purchased all of the vessels and equipment of the then carriers in the Puerto Rican trade, namely Seatrain, Sealand and TTT?

A It is a known fact, sir.

Q And from that date until at least March 1975 the only carrier—the only ocean carrier in the New York to Puerto Rican trade was PRMSA, is that correct?

A Yes, sir.

Q Were you aware that PRMSA filed a tariff beginning with the initiation of its service in the New York Puerto Rican trade which contained some of the provisions of the collective bargaining agreement between New York Shipping Association and International Longshoremen's Association?

MR. PORTNOY: Objection.

JUDGE JALETTE: Sustained.

* * * *

[515] JUAN SANTOS

having been first duly sworn, was examined and testified [516] as follows:

* * * *

DIRECT EXAMINATION

* * * *

Q What—Mr. Santos, are you an officer in San Juan Freight Forwarding, Inc.?

A Yes.

Q What office do you hold?

A President of San Juan Freight Forwarders.

Q When was San Juan Freight Forwarders formed?

A San Juan Freight Forwarders was formed in 1972, May 1972.

* * * *

[522] Q In the 1972-1973 period which Mr. Victor Santos picks up, did San Juan Freight Forwarding obtain its containers independently or from ocean carriers—its containers meaning containers which it had stuffed?

A From ocean carriers.

Q Could you identify those ocean carriers?

A Yes.

Transamerican Trailer Transport, called TTT, giving us the empty containers.

Q All of them?

A Yes, sir.

Q When PRMSA—are you aware that there came a point when PRMSA was formed to handle the Puerto Rican trade, ocean-going trade?

A Correct.

Q Did PRMSA ever furnish containers to your firm?

A No.

Q Who did, what entity did?

A MTM or PRMMI.

Q You are aware of the relationship between PRMSA and MTM and PRMMI?

A Yes, sir, they were the management group of PRMSA.

Q Do I gather then that MTM and PRMMI furnished containers to San Juan?

A That's correct.

GENERAL COUNSEL'S EXHIBIT NO. 3

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR
RELATIONS BOARD
REGION 2

Cases Nos. 2-CC-1364, 2-CE-75, 2-CC-1365

INTERNATIONAL LONGSHOREMEN'S ASSOCIATON
and NEW YORK SHIPPING ASSOCIATION, INC.

and

DOLPHIN FORWARDING, INC.

and

SAN JUAN FREIGHT FORWARDERS, INC.

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by the undersigned that:

1. Respondents ILA and NYSA admit the allegations contained in paragraphs 1(a) through (c), 2(a) through (e), 5, 14, 17, 18, 23(b) through (e), 24, and 25(c) of the Order Consolidating Cases, Consolidated Complaint and Notice of Hearing dated March 10, 1976 (hereinafter Complaint) and the Order Amending Complaint dated June 23, 1977.

2.(a) Puerto Rico Maritime Shipping Authority, hereinafter called PRMSA, is, and has been at all times material herein, an instrumentality duly organized under, and existing by virtue of the laws of the Commonwealth of Puerto Rico.

(b) At all times material herein, PRMSA has maintained an office and place of business at 1 World Trade Center, in the City and State of New York and in the Commonwealth of Puerto Rico, where it has at all times material herein owned certain facilities and vessels which

carried cargo in commerce between states of the United States and the Commonwealth of Puerto Rico.

(c) During the year 1974, which period is representative of its annual operations generally, PRMSA, in the course and conduct of its operation, derived gross revenues therefrom in excess of $500,000, of which in excess of $50,000 was derived from its operations referred to above in subparagraph 2(b).

(d) At all times material herein PRMSA has been a member of NYSA.

(e) At all times material herein PRMSA has been a person engaged in commerce and in an industry affecting commerce within the meaning of Sections 2(1), (6) and (7) and 8(b)(4)(B) and 8(e) of the Act.

3.(a) Maritime Transportation Management, Inc., of Puerto Rico, hereinafter called MTM is, and has been at all times material herein, a corporation with its principal office and place of busines at 358 St. Marks Place, Staten Island, in the City and State of New York, and at Pier C, New Port Development area, Puerto Rico, where it is, and has at all times material herein continuously managed and operated vessels owned by PRMSA in the Puerto Rican maritime trade pursuant to a contract between them.

(b) During the year 1974, which period is representative of its annual operations generally, MTM, in the course and conduct of its operations, derived gross revenues therefrom in excess of $500,000, of which in excess of $50,000 was derived from its operations in interestate commerce directly from the State of New York to the Commonwealth of Puerto Rico.

(c) At all times material herein, MTM has been a member of NYSA.

4.(a) Transamerican Trailer Transport, Inc., hereinafter called TTT, is, and has been at all times material herein, a corporation with its principal office and place of business at 358 St. Marks Place, Staten Island, in the City and State of New York, and at Pier C, New Port Development area, Puerto Rico Nueyo, in the Commonwealth of Puerto Rico where it is and has been at all times material herein, continuously engaged in business as a cargo carrier in commerce between States of the United States and foreign countries.

(b) During the year 1974, which period is representative of its annual operations generally, TTT, in the course and conduct of its operations, derived gross revenues therefrom in excess of $50,000, for the transportation of cargo directly in interstate and foreign commerce.

(c) At all times material herein, TTT has been a member of NYSA.

5.(a) Puerto Rico Marine Management, Inc., hereinafter called PRMMI, is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of Delaware.

(b) At all times material herein, PRMMI has maintained its principal office and place of business at Fleet & Corbin Streets, P.O. Box 1910, in the City of Elizabeth, and State of New Jersey, where it is, and has at all times material herein, continuously managed and operated vessels owned by PRMSA in the Puerto Rican maritime trade pursuant to a contract between them.

(c) During the year 1974, which period is representative of its annual operations generally, PRMMI, in the course and conduct of its operations, derived gross revenues therefrom in excess of $500,000, of which in excess of $50,000 was derived from its operations in interstate commerce directly from the State of New York to the Commonwealth of Puerto Rico.

5.(d) At all times material herein, PRMMI has been a member of NYSA.

6.(a) Dolphin is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of Massachusetts.

(b) At all times material herein, Dolphin has maintained its principal office and place of business at One Mayflower Drive, in the City of Hanover, and State of Massachusetts, where it is, and has been at all times material herein, continuously engaged in providing services for its customers as a non-vessel operating common carrier, hereinafter NVO, utilizing containers for effecting shipments thereof by ocean going vessels, and classified as such by the Federal Maritime Commission, hereinafter FMC.

(c) During the year 1974, which period is representative of its annual operations generally, Dolphin, in the course and conduct of its operations, derived gross revenues therefrom in excess of $500,000, of which in excess of $50,000 was derived from shipments in interstate commerce directly from various states of the United States to the Commonwealth of Puerto Rico.

7.(a) San Juan is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the Commonwealth of Puerto Rico.

(b) At all times material herein, San Juan has maintained its principal office and place of business at 601 West 28th Street, in the City and State of New York, where it is, and has been at all times material herein, continuously engaged in providing services for its customers as an NVO utilizing containers from effecting shipments thereof by ocean going vessels and classified as such by the FMC.

(c) During the year 1974, which period is representative of its annual operations generally, San Juan, in the course and conduct of its operations, derived gross revenues therefrom in excess of $500,000, of which in excess of $50,000 was derived from shipments in interstate commerce directly from various states of the United States to the Commonwealth of Puerto Rico.

8.(a) Penn Industries, Incorporated, hereinafter called Penn, is and has been at all times material herein, a corporation duly organized under, and existing by virtue of the laws of the State of New York.

(b) At all times material herein, Penn has maintained its principal office and place of business at 136 East 57th Street, in the City and State of New York, where it is, and has been at all times material herein, continuously engaged in the business of leading and discharging (unloading) containers for nonvessel common carriers.

(c) During the year 1974, which period is representative of its annual operations generally, Penn, in the course and conduct of its operations within the State of New York, derived gross revenues therefrom in excess of $100,000 for services which were performed pursuant to contract and arrangements with, and as agent for various interstate common carriers including, *inter alia*,

San Juan, which operated between and among various states of the United States and the Commonwealth of Puerto Rico.

9. MTM, PRMMI, TTT, San Juan, Dolphin and Penn are, and have been at all times material herein, persons and employers engaged in commerce and in an industry affecting commerce within the meaning of Sections 2(1), (2), (6) and (7) and Section 8(e) and Section 8(b)(4) of the Act.

10. Annexed hereto and made a part of this Stipulation are letters from the Fund to TTT described in paragraph 24(a) of the Complaint, which letters have been marked Exhibits A through E. They shall be admitted in evidence.

11. Annexed hereto and made a part of this Stipulation are minutes of a meeting of the Contract Board dated July 10, 1975 relating to the fines and assessments described in paragraphs 24(a) and (b) of the Complaint, which minutes have been marked Exhibit F. It shall be admitted in evidence.

12. Annexed hereto and made a part of this Stipulation is a letter from MTM to Dolphin dated February 21, 1975 described in paragraph 25(d) of the Complaint, which has been marked Exhibit G. It shall be admitted in evidence.

13. Annexed hereto and made a part of this Stipulation is an invoice from Dolphin dated August 29, 1975 described in paragraph 25(e) of the Complaint, which invoice has been marked Exhibit H. It shall be admitted in evidence.

14. Annexed hereto and made a part of this Stipulation is an agreement betwen ILA and CONASA dated June 21, 1974, (hereinafter referred to as the yellow agreement) which agreement has been marked Exhibit I. It shall be admitted in evidence.

15. Annexed hereto and made a part of this Stipulation is an agreement between ILA and CONASA dated May 30, 1975 (hereinafter referred to as the blue agreement) described in paragraph 20 of the Complaint, which agreement has been marked Exhibit J. It shall be admitted in evidence.

16. Annexed hereto and made a part of this Stipulation are the Findings of Fact and Conclusions of Law

dated September 18, 1975 and an Order dated September 18, 1975 in 75 Civ. 4027, by Judge MacMahon of the United States District Court for the Southern District of New York, which are marked Exhibits K and L respectively. They shall be admitted in evidence.

17. Annexed hereto and made a part of this Stipulation is a decision issued by Charles E. Morgan, Administrative Law Judge of the Federal Maritime Commission dated October 9, 1975, which is marked Exhibit M. It shall be admitted in evidence.

18. Annexed hereto and made a part of this Stipulation is an agreement betwen Penn Industries, Inc. and Local 976, ILA dated January 1, 1973, which is marked Exhibit N. It shall be admitted in evidence.

This Stipulation shall be part of the record in the hearing in this case and findings may be made on the basis of this Stipulation and the facts herein set forth. However, this Stipulation is entered into without prejudice to the right of any party to object at the hearing to the admission in evidence of any document or record referred to in this Stipulation on any ground other than authenticity and of any fact on the grounds of irrelevancy or immateriality and without prejudice to the right of any party hereto to introduce additional evidence material to the issues in this case whether or not such issues are dealt with or otherwise touched upon by the Stipulation.

New York, New York

.....	.....
Date	Counsel for the General Counsel National Labor Relations Board
.....	.....
Date	Counsel for New York Shipping Association, Inc.
.....	.....
Date	International Longshoremen's Association
.....	.....
Date	Counsel for Dolphin Forwarding, Inc. and San Juan Freight Forwarders, Inc.

EXHIBIT A

NYSA-ILA CONTAINER ROYALTY FUND
80 Broad Street
New York, N.Y. 10004

(212) 943-2740

August 27, 1974

Transamerican Trailer Transport, Inc.
358 St. Marks Place
Staten Island, New York 10301

Attention: Mr. Peter A. Holzer
President

Gentlemen:

Please be advised that the following numbered containers were witnessed at a consolidation or a distribution station by a Fund Investigator:

Container Number	Place	Date
RTTZ 790204	Port Motor Lines 125 Enterprise Ave. So. Secaucus, N.J.	August 5, 1974
RTTZ 790534	West Transfer Co. Pier 79, N. R. New York, N.Y.	August 12, 1974
RTTZ 790273	Colella Bros. Tkg. 645 E. 13th St., New York, N.Y.	August 12, 1974
RTTZ 790173	Passaic Terminal Warehouse 600 Washington Avenue Carlstadt, New Jersey	August 12, 1974
RTTZ 709763	San Juan Forwarding 601 W. 28th St., New York, N.Y.	August 14, 1974
RTTZ 790670	Colella Bros. 645 E. 13th St., New York, N.Y.	August 19, 1974

In accordance with the CONASA-ILA Container Rules, and the "Enforcement of Rules on Containers", it has been determined that each of these containers constitutes a violation. Therefore, the NYSA-ILA Container Royalty

Fund has assessed liquidated damages against each container in the amount of $1,000.00.

Please remit your check in the amount of $6,000.00 to the order of the NYSA-ILA Container Royalty Fund.

Very truly yours

/s/ Mary Townsend
MARY TOWNSEND
Executive Secretary

EXHIBIT B

NYSA-ILA CONTAINER ROYALTY FUND
80 Broad Street
New York, N.Y. 10004

(212) 943-2740

September 10, 1974

Transamerican Trailer Transport, Inc.
358 St. Marks Place
Staten Island, New York 10301

Attention: Mr. Peter A. Holzer
President

Gentlemen:

Please be advised that the following numbered containers were witnessed at a consolidation or a distrbiution station by a Fund Investigator:

Container Number	Location	Date
RTTZ 301096	Passaic Terminal Warehouse 600 Washington Ave. Carlstadt, N.J.	August 23, 1974
RTTZ 705091	International Container Express 86 Oak St. E. Rutherford, N.J.	August 23, 1974
RTTZ 790155	Passaic Terminal Warehouse 600 Washington St. Carlstadt, N.J.	August 26, 1974
TTTZ 281168	Burgmeyer Trucking 10 Water St., Jersey City, N.J.	August 28, 1974
TTTZ 281044	" " " "	August 28, 1974
TTTZ 281047	Passaic Terminal Whse. 600 Washington Ave. Carlstadt, N.J.	August 28, 1974

In accordance with the CONASA-ILA Container Rules, and the "Enforcement of Rules on Containers", it has been determined that each of these containers constitutes a violation. Therefore, the NYSA-ILA Container Royalty

Fund has assessed liquidated damages against each container in the amount of $1,000.00.

Please remit your check in the amount of $6,000.00 to the order of the NYSA-ILA Container Royalty Fund.

Very truly yours

/s/ Mary Townsend
MARY TOWNSEND
Executive Secretary

EXHIBIT C

NYSA-ILA CONTAINER ROYALTY FUND
80 Broad Street
New York, N.Y. 10004

(212) 943-2740

September 23, 1974

Transamerican Trailer Transport, Inc.
358 St. Marks Place
Staten Island, New York 10301

Attention: Mr. Peter A. Holzer
President

Gentlemen:

Please be advised that the following numbered containers were witnessed at a consolidation or a distribution station by a Fund Investigator:

Container No.	Location	Date
TTTZ 281557	World Warehouse Bldg. #3, Bklyn. Navy Yard Brooklyn, New York	September 6, 1974
TTTZ 281290	Farrara Bros. 525 West 24th St. New York, New York	September 9, 1974
TTTZ 281252	World Warehouse Bldg. #3, Bklyn, Navy Yard Brooklyn, New York	September 10, 1974
RTTZ 790126	" "	September 10, 1974
TTTZ 281465	Coella Bros. 645 East 13th Street New York, New York	September 12, 1974
RTTZ 281116	Passaic Terminal Whse. 600 Washington Avenue Carlstadt, New Jersey	September 13, 1974
RTTZ 790376	" "	September 13, 1974
TTTZ 790136	Ferrara Bros. Tkg. 525 W. 24th St., New York, N.Y.	September 16, 1974
RTTZ 790063	San Juan Forwarding 601 W. 28th St., New York, N.Y.	September 18, 1974
RTTZ 790397	World Warehouse Bldg. 3, Bklyn Navy Yard Brooklyn, N.Y.	September 19, 1974

In accordance with the CONASA-ILA Container Rules, and the "Enforcement of Rules on Containers", it has been determined that each of these containers constitutes a violation. Therefore, the NYSA-ILA Container Royalty Fund has assessed liquidated damages against each container in the amount of $1,000.00.

Please remit your check in the amount of $10,000.00 to the order of the NYSA-ILA Container Royalty Fund.

Very truly yours

/s/ Mary Townsend
MARY TOWNSEND
Executive Secretary

EXHIBIT D

NYSA-ILA CONTAINER ROYALTY FUND
80 Broad Street
New York, N.Y. 10004

(212) 943-2740

October 2, 1974

Transamerican Trailer Transport, Inc.
358 St. Marks Place
Staten Island, New York 10301

Attention: Mr. Peter A. Holzer
President

Gentlemen:

Please be advised that the following numbered containers were witnessed at a consolidation or a distribution station by a Fund Investigator:

Container No.	Location	Date
RTTZ 790533	Passaic Terminal Warehouse 600 Washington Ave. Carlstadt, N.J.	September 25, 1974
RTTZ 790401	" "	September 25, 1974
TTTZ 790198	Ferrara Bros. 525 West 24th Street New York, N.Y.	September 30, 1974
RTTZ 790348	Passaic Terminal Warehouse 600 Washington Ave. Carlstadt, N.J.	September 30, 1974
RTTZ 790008	" "	September 30, 1974

In accordance with the CONASA-ILA Container Rules, and the "Enforcement of Rules on Containers", it has been determined that each of these containers constitutes a violation. Therefore, the NYSA-ILA Container Royalty Fund has assessed liquidated damages against each container in the amount of $1,000.00.

Please remit your check in the amount of $5,000.00 to the order of the NYSA-ILA Container Royalty Fund.

Very truly yours,

/s/ Mary Townsend
MARY TOWNSEND
Executive Secretary

T
gbe

EXHIBIT E

NYSA-ILA CONTAINER ROYALTY FUND
80 Broad Street
New York, N.Y. 10004

(212) 943-2740

October 17, 1974

Transamerican Trailer Transport, Inc.
358 St. Marks Place
Staten Island, N.Y. 10301

Attention: Mr. Peter A. Holtzer
President

Gentlemen:

Please be advised that the following numbered containers were witnessed at a consolidation or a distribution station by a Fund Investigator:

Container No.	Location	Date
RTTZ 790284	Dyna Trans—Shed 192 Port Newark, New Jersey	Oct. 2, 1974
RTTZ 281486	Passaic Term. Whse. 600 Washington Ave. Carlstadt, N.J.	Oct. 2, 1974
RTTZ 790376	" " "	Oct. 2, 1974
RTTZ 790052	" " "	Oct. 2, 1974
RTTZ 790218	Facility Warehouse 70-72 Laight Street New York, New York	Oct. 4, 1974
RTTZ 790167	Ferrara Bros. Tkg. 525 W. 24th Street New York, New York	Oct. 10, 1974

In accordance with the CONASA-ILA Container Rules, it has been determined that each of these containers constitutes a violation. Therefore, the NYSA-ILA Container Royalty Fund has assessed liquidated damages against each container in the amount of $1,000.00.

Please remit your check in the amount of $6,000.00 to the order of the NYSA-ILA Container Royalty Fund.

Very truly yours,

/s/ Mary Townsend
MARY TOWNSEND
Executive Secretary

cc: Mr. Paul Semack

EXHIBIT F

MEMORANDUM TO ALL MEMBERS OF
THE NYSA-ILA CONTRACT BOARD:

RE: Transamerican Trailer
Transport, Inc. Hearing
July 10, 1975

On Thursday, July 10, 1975, the undersigned met with Mr. Paul Semack, Senior Vice President, Transamerican Trailer Transport, Inc., to consider alleged violations of the Rules on Containers.

At the start of the meeting, Mr. Semack handed over two checks—one issued by Transamerican Trailer Transport, Inc. in the amount of $10,000., and another issued by Maritime Transportation Management, Inc. of Puerto Rico in the amount of $4,000. covering certain containers deemed to be in VIOLATION at the previous meeting held January 23, 1975.

The containers covered are as follows:

(Transamerican Trailer Transport Inc. Check #9555- in amount of $10,000)

RTTZ 790173	RTTZ 281116
RTTZ 709763	RTTZ 790376
RTTZ 705091	RTTZ 790533
RTTZ 790155	RTTZ 790401
TTTZ 281047	RTTZ 790348

(Maritime Transportation Management, Inc. of Puerto Rico—in amount of $4,000)

RTTZ 790008	RTTZ 790376
RTTZ 281486	RTTZ 790052

At the January 23, 1975 meeting several containers were placed in the HOLD category pending receipt of warehouse receipts. Mr. Nicholas informed Mr. Semack that since the 30 day extension has long expired, these containers would have to be considered violations.

At this point Mr. Semack stated that he knew nothing about a "30 day extension".

Mr. Nicholas then proceeded to advise Mr. Semack that with respect to any items deemed to be in violation of the Rules, a company is given days in which to appeal

such rulings. However, Mr. Semack was further informed that if TTT were unable to submit any required or additional information in the 30 days, the finding of a Violation would stand since the Board had decided that no more than one 30 days extension would be given in which to submit missing documentation.

Mr. Nicholas then reviewed the following items held from the January 23, 1975 and August 28, 1974 meetings (see Attachment "A":

TTTZ 281557—HOLD)	Must submit warehouse
TTTZ 281252—HOLD)	receipts within 30
RTTZ 790126—HOLD)	days
RTTZ 790397—HOLD)	
RTTZ 790284—VIOLATION	
RTTZ 790244—HOLD)	
RTTZ 207911—HOLD)	If TTT can submit documentation
*RTTZ 790057—HOLD)	proving these were Northbound
RTTZ 790057—HOLD)	shipments—No Violation;
RTTZ 790057—HOLD)	if Southbound—Violation
RTTZ 790349—HOLD)	
RTTZ 790007—HOLD)	
RTTZ 790273—NO VIOLATION	
RTTZ 790670—NO VIOLATION	
TTTZ 281465—NO VIOLATION	
TTTZ 790136—NO VIOLATION	
TTTZ 790198—VIOLATION	
RTTZ 790167—VIOLATION	

With regard to the three violations noted against Containers Nos. RTTZ 790284, TTTZ 790198 and RTTZ 790167, there is no further appeal available to the carrier.

With regard to the 41 containers scheduled for review today (see Attachment "B") Mr. Semack advised that he was unable, at this time, to submit any documentation thereon.

Mr. Nicholas advised Mr. Semack that he would be granted 30 days in which to supply the necessary documentation. If, no documentation is supplied by August 11, 1975, these containers are to be considered in Violation of the Rules and the Container Royalty Fund will expect payment on all open items.

---

* Three (3) separate movements.

NYSA-ILA
CONTRACT BOARD
80 Broad Street
New York, N. Y. 10004

ATTACHMENT "A"

TRANSAMERICAN TRAILER TRANSPORT

At the January 23, 1975 meeting with Mr. Semack, the following items were placed in the "Hold" category pending warehouse receipts:

TTTZ 281557 World Whse. observed 9/6/74—our letter 9/23/74
Matsushita Electric—Northbound
TTTZ 281252 World Whse. observed 9/10/74—our letter 9/23/74
RTTZ 790126 World Whse. observed 9/10/74—our letter 9/23/74
RTTZ 790397 World Whse. observed 9/19/74—our letter 9/23/74
RTTZ 790284 Dyna Trans—observed 10/2/74—our letter 10/17/74
Shed #192 (*Question of Manufacturer's Label which was referred to the full Board*)

Items held open from the August 28, 1974 meeting, reviewed at the January 23, 1975 meeting, referred to the full Board Re Manufacturer's Label. However, Mr. Nicholas was requested to Furnish his recommendation.

RTTZ 790244 Dyna Trans (Domel) observed 12/10/73—our letter 2/5/74
RTTZ 207911 Dyna Trans Co. observed 1/22/74—our letter 3/8/74
RTTZ 790057 Dyna Trans Co. observed 3/20/74—our letter 4/22/74
RTTZ 790057 Dyna Trans Co. observed 4/9/74—our letter 4/22/74
RTTZ 790057 Dyna Trans Co. observed 5/14/74—our letter 6/14/74
RTTZ 790349 Dyna Trans Co. observed 5/31/74—our letter 6/14/74
RTTZ 790007 Dyna Trans Co. observed 6/20/74—our letter 6/28/74

The following items were determined to be *VIOLATIONS REMIT*. At the January 23, 1975 meeting, the Committee concurred that they would discuss the matter further and advise Mr. Semack of their decision at an early date. However, no liquidated damages would be assessed as to past violations.

RTTZ 790273-Colella Bros.-observed 8/12/74-our letter 8/27/74
RTTZ 790670-Colella Bros.-observed 8/19/74-our letter 8/27/74
RTTZ 281465-Colella Bros.-observed 9/12/74-our letter 9/23-74
TTTZ 790136-Colella Bros.-observed 9/16/74-our letter 9/23/74
TTTZ 790198-Ferrara Bros.-observed 9/39/74-our letter 10/2/74
RTTZ 790167-Ferrara Bros.-observed 10/10/74-our letter 10/17/74

EXHIBIT G

MARITIME TRANSPORTATION MANAGEMENT, INC. OF PUERTO RICO

358 St. Marks Place, Staten Island, New York 10301
Telephone: (212) 447-2600 • Cable: TOTEM

February 21, 1975

Mr. Richard Lee
Dolphin Freight Forwarding
P. O. Box 76
Hanover, Massachusetts

RE: Trailer RTTZ 790052 EKH Voy. 78-7 B/L 3175
" RTTZ 790348 PDL Voy. 79-9 B/L 3212
" TTTZ 281486 EKH Voy. 79-1 B/L 3175
" RTTZ 790376 EKH Voy. 78-7 B/L 3176

RE: Tariff FMC F No. 1 of Puerto Rico Maritime Shipping Authority

Original Page 123—Tariff Rule E of Rule 440

Dear Mr. Lee:

On January 23, 1975, meeting was held in the offices of the New York Shipping Association, Inc. with the Contract Administration Officer and other members of the NYSA/ILA Royalty Fund as concerns violations of the NYSA/ILA Rules on Containers as articulated in the current ILA Labor Contact in effect in the Port of New York.

Through its Fund Investigators, subject trailers were discovered to be in violation of the Rules on Containers. As such, MTM was assessed liquidated damages of $1000 per trailer.

Accordingly, I have enclosed our invoice MTM 141-75 billing Dolphin Forwarding the amount of these liqui-

dated damages in accordance with our tariff in effect at the time.

Very truly yours,
/s/ Paul Semack
PAUL SEMACK

PS:ph

Encl.

cc: Mr. E. Sheppard—Morgan, Lewis, Bockius
Mr. R. Guevada—Director of Operations—PRMSA
Mr. R. Lugo—President MTM
Mr. M. Massaro—Revenue Auditor

MARITIME TRANSPORTATION MANAGEMENT, INC. OF PUERTO RICO
358 St. Marks Place, Staten Island, New York 10301
Telephone: (212) 447-2600

—INVOICE—

No. MTM-141-75

Date: 2/21/75

Dolphin Forwarding
P.O. Box 76
Hanover, Mass.

	Amount	Total
Violation of Conasa-ILA rules on containers, as per attached Puerto Rican Maritime Shipping Authority Tariff FMC F No. 1		
Four trailer @ $1,000.00 per trailer		
TRL # RTTZ 790052 @ $1,000.00	$1,000.00	
RTTZ 790348 @ $1,000.00	1,000.00	
RTTZ 281486 @ $1,000.00	1,000.00	
RTTZ 790376 @ $1,000.00	1,000.00	
TOTAL		$4,000.00
PAY THIS AMOUNT		$4,000.00

TRANSAMERICAN TRAILER TRANSPORT, INC.
JANUARY 23, 1975

List Nos.	Container Numbers	Location	Our Letter		Comments
26	RTTZ 790348	Passaic Term.	Whse.	10/2/74	VIOLATION
29	RTTZ 281486	Passaic Term.	Whse.	10/17/74	VIOLATION —(Dolphin)
30	RTTZ 790376	" "	"	10/17/74	VIOLATION —(Dolphin)
31	RTTZ 790052	" "	"	10/17/74	VIOLATION —(Dolphin)

MARITIME TRANSPORTATION MANAGEMENT, INC. OF PUERTO RICO

358 St. Marks Place, Staten Island, New York 10301
Telephone: (212) 447-2600)

INVOICE

No. MTM 595

Date: 8/29/75

Dolphin Forwarding
P. O. Box 76
Hanover, Mass.

To charge you for container violations per rule 3(c) of PRMSA Tariff No. 1 FMC-F No. 1 Page 124 at the rate of $1,000.00 per container as follows:

Container No.	Was observed at the loading platform of:	On (Date)		
RTTZ 790179	Passaic Term. Whse.	10/16/74		
RTTZ 790364	600 Washington Ave.	10/21/74		
RTTZ 790662	Carlstadt, N.J.	10/21/74		
RTTZ 200463	"	11/13/74		
RTTZ 790446	"	11/18/74		
RTTZ 790444	"	12/10/74		
TTTZ 281088	"	11/20/74		
7 containers @ $1,000.00 per container =			$7,000.00	$7,000.00

Please Remit

[FILE Exec. Sec. 0]
UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD—REGION 2

Cases Nos. 2-CC-1364, 2-CC-1365, 2-CE-75

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION & NEW YORK SHIPPING ASSOCIATION, INC.

and

DOLPHIN FORWARDING, INC.

and

SAN JUAN FREIGHT FORWARDERS, INC.

STIPULATION

WHEREAS, International Longshoremen's Association, (herein called ILA), New York Shipping Association, Inc., (herein called NYSA), Dolphin Forwarding, Inc. and San Juan Freight Forwarders, Inc. (herein called the Charging Parties), and the General Counsel of the National Labor Relations Board, (herein called the General Counsel), being all of the parties to this proceeding, desire to petition the National Labor Relations Board, in order to effectuate the purposes of the National Labor Relations Act, 29 U.S.C. Section 151, *et seq.*, (herein called the Act), and to avoid all unnecessary costs and delay, to exercise its powers under Section 102.50 of the Rules and Regulations of the Board, Series 8, as amended, (herein called the Rules), to transfer this proceeding to the Board; and

WHEREAS, pursuant to a Consolidated Complaint and Notice of Hearing and an Order Amending Complaint, a hearing was held, the testimony of certain wit-

nesses was taken, and exhibits were introduced into evidence, and other testimony, offers of proof and exhibits were proffered by the ILA and NYSA and other exhibits by the General Counsel, which were rejected by the Administrative Law Judge and placed in the rejected exhibits file.

NOW, THEREFORE, IT HEREBY IS STIPULATED by and between the parties herein as follows:

1. The parties hereby acknowledge receipt and due service of the Charges, the Consolidated Complaint, the Order Amending Complaint, the Notice of Hearing, the Order Extending Time to Answer, ILA's and NYSA's Answers and Amended Answers, and Orders Rescheduling Hearing.

2. The parties agree that the following documents constitute the entire record in these cases:

(a) The Charges;

(b) The Consolidated Complaint;

(c) The Amended Complaint;

(d) The Answers;

(e) The Amended Answers

(f) The Transcript of Testimony

(g) The General Counsel's Exhibits, ILA's Exhibits, NYSA's Exhibits and the Rejected Exhibits;

(h) General Counsel's Motion to Strike Defenses, ILA's Opposition thereto, NYSA's Reply to General Counsel's Motion, and General Counsel's Reply to the Opposition;

(i) NYSA's Cross-Motion to Dismiss the Complaint;

(j) General Counsel's Opposition and Reply Papers concerning said Motion;

(k) The Administrative Law Judge's Order granting the Motion to Strike Defenses and Denying the Cross-Motion to Dismiss the Complaint;

(l) ILA's and NYSA's Motion for Special Permission to Appeal the Judge's Order Striking Defenses and General Counsel's Reply thereto and the Board's Order denying Special Permission;

(m) ILA's and NYSA's Motion to Offer Written Testimony and General Counsel's papers Opposing said Motion;

(n) The Judge's Order Denying said Motion;

(o) ILA's and NYSA's Application to take Depositions and Demand for Production of Documents;

(p) The Denial of said Application;

(q) ILA's and NYSA's Request to the General Counsel Appealing the Denial of the aforementioned Applications and

(r) The Judge's Orders for continuation in the hearing.

3. The parties agree that they waive the making of findings of fact and conclusions of law by an Administrative Law Judge and the issuance of an Administrative Law Judge's Decision and Recommended Order. They desire to submit this case directly to the Board for findings of fact, rulings on Exceptions to Rulings on motions, objections and offers of proof, conclusions of law and the issuance of a Decision and Order. They further request the Board to set dates for the filing of briefs and reply briefs herein by all parties pursuant to § 102.46 of the Board's Rules.

4. Approval of this Stipulation by the Administrative Law Judge shall constitute an Order transferring the within proceeding to the Board.

By: /s/ Irwin M. Portnoy
IRWIN M. PORTNOY
Counsel for the General Counsel
National Labor Relations Board
Region 2

December 7, 1977

(Date)

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION
By: /s/ Illegible
ILLEGIBLE

Dec. 5, 1977

(Date)

NEW YORK SHIPPING ASSOCIATION, INC.
By: /s/ Illegible
ILLEGIBLE

Dec. 5, 1977

(Date)

DOLPHIN FORWARDING, INC.
By: /s/ Thos. Dleonway
THOS. DLEONWAY

Wed. 7 December, 1977

(Date)

SAN JUAN FREIGHT FORWARDERS, INC.
By: /s/ Thos. Dleonway
THOS. DLEONWAY

Wed. 7 December, 1977

(Date)

APPROVED:

/s/ Henry L. Jalette,
HENRY L. JALETTE,
Administrative Law Judge
National Labor Relations Board

December 22, 1977

(Date)

[FILE Judges Div.]

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D.C.

Case Nos. 2-CC-1364, 2-CC-1365, 2-CE-75

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION & NEW YORK SHIPPING ASSOCIATION, INC.

and

DOLPHIN FORWARDING, INC.

and

SAN JUAN FREIGHT FORWARDERS, INC.

ORDER

The stipulation of the parties transferring this proceeding to the Board and waiving findings of fact and conclusions of law and the issuance of a decision and recommended order by the undersigned is hereby approved, and

IT IS HEREBY ORDERED that the proceeding be transferred to the Board.

/s/ Henry L. Jalette
HENRY L. JALETTE
Administrative Law Judge

Dated: December 22, 1977

New York, N.Y.
[FILE Sec. D]

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Cases 2-CC-1364, 2-CC-1365, 2-CE-75

[FILE IN FORMAL FILE . .D.]

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION & NEW YORK SHIPPING ASSOCIATION, INC.

and

DOLPHIN FORWARDING, INC.

and

SAN JUAN FREIGHT FORWARDERS, INC.

ORDER APPROVING STIPULATION

and

TRANSFERRING PROCEEDING TO THE BOARD

A hearing was held on July 11 and Sept. 19, 20 and 21, 1977, in the above-entitled proceeding before Administrative Law Judge Henry L. Jalette of the National Labor Relations Board, at which time certain exhibits were received into evidence. Thereafter, on December 7, 1977, International Longshoremen's Association; New York Shipping Association, Inc.; Dolphin Forwarding, Inc.; San Juan Freight Forwarders, Inc.; and the General Counsel of the National Labor Relations Board entered into a Stipulation. The parties agreed that the Stipulation and the documents attached thereto consti-

tute the entire record in the cases. They waived the making of findings of fact and conclusions of law and the issuance of a decision by an Administrative Law Judge and desire to submit the cases directly to the Board for findings of fact, rulings on Exceptions to Rulings on motions, objections and offers of proof, conclusions of law and the issuance of a Decision and Order. The parties requested that the Board set dates for the filing of briefs and reply briefs. On December 22, 1977, the Administrative Law Judge approved the Stipulation and by Order of same date, referred the proceeding to the Board.

The Board having duly considered the matter,

IT IS HEREBY ORDERED that the Stipulation be, and it hereby is, approved and made a part of the record herein.

IT IS HEREBY ORDERED that the above-entitled proceeding be, and it hereby is, transferred to and continued before the Board in Washington, D.C., for the purpose of making findings of fact and conclusions of law and for the issuance of a Decision and Order.

The parties herein may file briefs with the Board in Washington, D.C., on or before January 25, 1978, and may file reply briefs on or before February 8, 1978.

Dated, Washington, D.C., January 4, 1978.

By direction of the Board:

Associate Executive Secretary

GEORGE A. LEET

THE UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D. C.

Cases Nos. 2-CC-1364, 2-CC-1365, 2-CE-75

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION AND NEW YORK SHIPPING ASSOCIATION, INC.

and

DOLPHIN FORWARDING, INC.

and

SAN JUAN FREIGHT FORWARDERS, INC.

ORDER

On March 10, 1976, the General Counsel issued the consolidated complaint in the above-captioned case alleging that International Longshoremen's Association (herein referred to as Respondent ILA), and New York Shipping Association, Inc. (hereinafter referred to as Respondent NYSA), had violated Section 8(e) of the Act and that Respondent ILA had violated Section 8(b)(4)(i) and (ii)(B) of the Act by maintaining and enforcing a collective-bargaining agreement containing certain rules on containers against Dolphin Forwarding, Inc. (hereinafter referred to as Dolphin), the Charging Party in Cases Nos. 2-CC-1364 and 2-CE-75 and against San Juan Freight Forwarders, Inc. (hereinafter referred to as San Juan), the Charging Party in Case No. 2-CC-1365. Thereafter, Respondent ILA and Respondent NYSA timely filed answers and amended answers. The amended answers contained certain affirmative defenses and General Counsel has moved to strike such affirmative answers.[1]

[1] All parties have filed briefs in support of their positions. Respondent ILA has requested deferral of ruling on General Counsel's motion until the hearing or pending submission of further argument. The request is denied. The briefs previously filed adequately cover the issues and have been duly considered.

A. The Affirmative Defenses of Respondent NYSA

Respondent's first defense is that the dispute underlying this proceeding is a primary dispute between it and its members on the one hand and Respondent ILA on the other. Its second defense is that the contract provisions here complained of are valid work preservation rules.

In *International Longshoremen's Association, AFL-CIO (Consolidated Express, Inc.)*, 221 NLRB 956 (1975), hereinafter referred to as the *Conex* case, the Board rejected similar defenses. Respondent NYSA asserts, however, that the instant case presents different factual issues which require a hearing of evidence on these affirmative defenses. As General Counsel notes, the assertion is contrary to the deposition of counsel in a Notice of Motion to stay proceedings in *Sidney Danielson* v. *International Longshoremen's Association and New York Shipping Association, Inc.*, U.S. D.C., Southern District of New York, Civil Action No. 75-Civ-4027, wherein the Regional Director of the Board, pursuant to the charges in this case, petitioned for an injunction pursuant to Section 10(1) of the Act. In that deposition, counsel averred that "the issues in the instant action are identical to the issues raised and fully litigated in [*Conex*]. The parties to this proceeding, except for the charging parties, are identical to those in [*Conex*]."

In *Conex*, the Board found that the Rules on containers were not valid work preservation rules and implicitly rejected the defense that the underlying dispute was a primary one betwen Respondent NYSA and Respondent ILA. In doing so, the Board defined the work in controversy as the LCL and LTC container work performed by the consolidators in that case at their own off-pier premises. As such work had traditionally been performed by consolidators at their own off-pier premises, the Board rejected the work preservation defense. Its holding was affirmed in *Longshoremen* v. *N.L.R.B.*, 537 F.2d 706 (2nd Cir., 1976).

General Counsel asserts in support of his motion that the consolidators in this case, Dolphin and San Juan, have traditionally performed the work here in question at off-pier premises, and Exhibits 3 and 4 submitted by Respondent NYSA in its reply to the motion to strike defenses support the assertion. Significantly, Respondent NYSA has not averred in its defenses of work preservation that Respondent ILA has historically and traditionally performed the ICL and LTC work performed by Dolphin and San Juan. Thus, it appears that Respondent NYSA by its first and second defenses is seeking to relitigate the same issue which the Board decided in *Conex*. That such is the case is evident from Respondent NYSA's assertion that a Supreme Court decision in *Northeast Marine Terminal Company* v. *Caputo*, Docket 76-444 (June 17, 1977) places in doubt the continuing validity of *Conex*. However, in *International Longshoremen's Association, AFL-CIO, et al.* (*Associated Transport, Inc., et al.*), 231 No. 64, a majority of the Board rejected a reading of *Caputo* which would, in effect, reverse *Conex*. To the contrary, the majority adverted to its words in *Conex* that "it is clear that the on-pier stripping and stuffing work performed by Longshoremen as an incident of loading and unloading ships does not embrace the work [of stuffing and stripping containers] traditionally performed by Consolidated and Twin at their own off-pier premises." Thus, it is clear that *Conex* is viable precedent for this case and that while "the facts of each case in the area are paramount," [2] the facts that require consideration relate to the work traditionally performed by the consolidators off the pier. As noted earlier, Respondent NYSA has not averred that Respondent ILA has traditionally performed the work which Dolphin and San Juan was performing which became the subject matter of the controversy in the instant case.

For the foregoing reasons, I find merit to General Counsel's motion to strike the first and second defenses and they are hereby stricken.

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[2] *International Longshoremen's Association, AFL-CIO, et al.* (Associated *Transport, Inc., et al.*), *supra*, slip opinion, page 8.

2. Third defense

The third defense asserted by Respondent NYSA in its amended answer is that the charge against it is time barred under Section 10(b) of the Act.

The charge against Respondent NYSA was filed by Dolphin on May 6, 1975. While the Rules on Containers "here alleged to be violative of Section 8(e) of the Act were entered into more than 6 months before the filing of Dolphin's charge, the complaint alleges, and the answer admits, that on January 23, 1975, Respondent NYSA, in implementation of the Rules on Containers, by admitting agents, levied fines upon Maritime Transportation Management, Inc., of Puerto Rico and Transamerican Trailer Transport, Inc., by reason of their having furnished containers to Dolphin and San Juan. Such conduct would constitute an entering into a contract within the meaning of Section 8(e) of the Act. As it occurred less than 6 months before the filing of the charge in 2-CE-75, the affirmative defense of Section 10(b) of the Act is without merit and is hereby striken.[3]

3. Fourth Defense

Respondent NYSA's fourth defense is the allegation that Dolphin and San Juan have not obtained permits assertedly required by provisions of the Interstate Commerce Act to engage in the consolidation of freight of LTL and LCL cargo and have therefore not lawfully acquired the work which is the subject of dispute herein. This defense is stricken as legally insufficient. Dolphin's and San Juan's qualifications to perform the work in question under the provisions of the Interstate Commerce Act is a matter extraneous to the application and enforcement of the Act. The Board, in a proceeding of this type, must determine only whether Dolphin and San Juan are either employers or persons within the meaning of Sections 2(1) and (2) and 8(e) of the Act.

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[3] Respondent NYSA has also moved to dismiss the complaint on the grounds that it is barred by Section 10(b) of the Act and it is moot. The motion to dismiss is denied.

3. The affirmative defenses of Respondent ILA

1. First, Second, Third, and Sixth defenses

These defenses of Respondent ILA are essentially the same as the first, second, third and fourth defenses of Respondent NYSA and they are hereby stricken for the reasons given above with respect to Respondent NYSA's first, second, third, and fourth defenses.

2. Fourth defense

The fourth defense asserts laches on the part of Dolphin and San Juan in filing charges. The defense is legally insufficient and is hereby stricken.

3. Fifth defense

This defense avers that impairment of the Rules on Containers and reaffirmation of the holding in *Conex* will adversely effect 25,000 longshoremen and pensioners and their families and create chaos in the industry. This defense raises matters of policy not properly addressed to the Board and is legally insufficient.

It is hereby stricken.

/s/ Henry L. Jalette
HENRY L. JALETTE
Administrative Law Judge

Dated: September 12, 1977

FILE Judges Div.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D.C.

FILE IN
FORMAL FILE
D P

Cases Nos. 2-CC-1364, 2-CC-1365, 2-CE-75

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION AND NEW YORK SHIPPING ASSOCIATION, INC.

and

DOLPHIN FORWARDING, INC.

and

SAN JUAN FREIGHT FORWARDERS, INC.

ORDER

Pursuant to agreement of the parties at hearing herein, Respondents New York Shipping Association and International Longshoremen's Association have submitted affidavits setting forth the evidence they wished to adduce in defense of the allegations of the complaint herein. Such affidavits and attached exhibits have been duly considered and they are hereby rejected as the matters contained therein relate to defenses which are deemed to be legally insufficient in light of the decision of the National Labor Relations Board in *International Longshoremen's Association, AFL-CIO, (Consolidated Express, Inc., and Twin Express, Inc.)* 221 NLRB 956. The

affidavits and exhibits attached thereto shall be placed in the rejected exhibit file.

As Respondent's affidavits and exhibits have been rejected, in accordance with the agreement of the parties, the hearing scheduled for November 7, 1977, is hereby cancelled and the hearing is closed. The parties are given until December 5, 1977, to file briefs.

/s/ Henry L. Jalette
HENRY L. JALETTE
Administrative Law Judge

Dated: November 2, 1977

EXHIBIT No. 1

10 DEC 74

SUBJ: Mem for Record

FROM: Russ McHugh OPS MGR-DOLPHIN

Received call from Paul Semack from "Transamerican" asking for Dick Lee. Replied that he was in PR for week. Said he had list of containers given him by ILA which were domiciled in Carlstadt. Told him that I didn't know if I was the one to help him but would take the info. and would pass it on to RWL. Gave me the following list: 790533, 790401, 790348, 790008, 301096, 790155, 281047, 281116, 790173, 281436, 790052, 790376. Trl 301096 he then said to omit as was flatbed y didn't apply to us. He then stated that listed containers were liable to $1000 for being stuffed within 50 mile zone and that they were going to come after us legally to collect this amount as per the tariff. Also, that they would try to collect this amount for any containers prior to OCT 1 as we had been showing Hanover as origin point and deceiving TTT. He then asked if Hanover was outside of 50 mile zone and i said no. He then stated all loads moving out of the Boston area was subject to being loaded by ILA. Told him I didn't know why because no one servicing PR left out of Boston. Finally stated that he was x not releasing any equipment to us, not accepting anything from us, nor would he release anything to anyone else for us. Told me to load our trailers and take them to Sealand to have them stripped, and restuffed and pay the specified charge. Stated that our freight was much too expensive for him to handle at a $1000 fine per trailer.

Called RWL and explained. Discussed matters and he said he was in PR and couldn't do anything till he got home, but to get in touch with, first, Bob W., and then Chas. Haslup at Fmc. (N.B.) Cemack had called at 9:15, was now about 9:40. Talked with Bob W. who said to apply for injunction. Regarding freight under

load, said to either have Fram book load for themselves, consigned to us in PR, or call Semack back and explain that was OK load and would he accept. Re frt under load, Bob said to let SL strip and restuff, and to move frt out of Boston by SL.

Called Haslup, who was out of town til 18th. Spoke to Don Brunner who was not quite as familiar with case. Brunner asked general questions, after I explained the situation, like: did I know of anyone else who was affected by this practice, how many loads had we moved by TTT, ST, SL, how many loads per week, etc. Said he would check into situation and get back. When I asked if he was familiar with Conex-Twin case and should we go same route thru NLRB, he said prob. would be best.

Bob W. called saying that perhaps we should try to lodge the PTW load, TRL RTTZ 790444 to see if it would be accepted or rejected, and see if we could also draw an MT on one of the open bookings that we have. Idea was that we would then have legal basis for court case.

TLX'd RWL who said that shouldn't go this route as issue was already at head and we had received word from officer of TTT that they were refusing our freight. This was enough segue RWL. I stated that they had not actually refused anything, at this point was a threat (promise, maybe?). RWL said no. When asked if I should advise Tom Murphy, RWL said yes, advise him, but he wasn't guy for the job, although his NJ cohorts could probably do the work, although it would be "veddy (sic) expensive".

Called Tom and explained to him situation, then explained to him the Conex case (he didn't seem familiar with it) then had to explain to him the two divisions of PRMSA and the tariff as he seemed to want to take action against TTT group only. He asked for rundown of PRMSA, PRMM, & TMT asking for info as to whether they were public agencies or private groups and where they were organized. This info requested by TLX to RWL.

Prior to calling Tom had tried to reach Semack but he was unavailable. After call with Tom, Semack called back. Explained to him that Fram load TRL 298944 was on way and would he accept it. Evaded question and said that someone in our company had made bad decision long time ago. Then asked for list of numbers of TRLS in our system. Gave him 790444 and 790820 at Seaboard. His response was that we should not load them. When pressed again about the Frm load, his response was misleading: My query, "Well what are you gonna do about that load on the way in, you gonna accept it?" His reply; "Accept it? Shit, I'll probably strip and stuff it." With that we hung up, him knowing that we were sending that load in.

Spoke to X Brunner again. He said the reason for our problems was a meeting held last week between the 2 management companies of PRMSA: the discussion centered around the fact(?) that TTT was not adhering to ILA rules. Conclusion was that TMT (TTT) would now adhere to those rules. He also sed that best route was to go via Conex route thru NLRB as his agency had no injunctive powers. Did wish that he was private lawyer because felt it was a strong case, and he would win.

Circa noon, But O. called y said he had received a TWX from Rebalado saying that they were to cancel all Dolphin bookings and issue no new ones. Told Bud that we had been found. But wanted to know exactly what had Semack told me y I related it to him. He said he wanted to be prepared y know what was up when he spoke to Semack. But said he would check things and wouldn't let go of this. I thanked him and said if necessary we would protect him with TTT as Bud was ignorant of our NJ operation and no recriminations should befall him due to our violations and fines TTT may have to pay because Bud booked out trls.

MEMO FOR RECORD

11 DEC 74

FROM: Russ McHugh

Recollections from my first phone conversation with Semack—Semack said that Dolphin had been deceiving TTT/EMTM by showing Hanover, MA as our address. Apparently TTT construing this as origin point; perhaps this info was given to him as a result of meeting last week with both management companies.

Point to consider on this if any legal action ensues is that TTT B/L only has spaces to show Shipper, Consignee and Party to be notified. Unlike the old ST & SL B/L, there is no space to show the origin point. This is not to say that we would not continue to show Hanover as we did in the ST days, but that alternative was not even available to us due to the construction of the B/L.

Circa 12:30, But O. called HA and informed him that he had to cancel all bookings for DFI and was not allowed to issue any new ones. But stated to HA that he did not know of any DFI loads stuffed in NJ and HA replied "How would you, all you gave us was a booking assuming we were moving out of our New England territory." But is apparently quite concerned that TTT officials may think he deeply involved with DFI and could cost him a job, let alone the account.

MEMO FOR RECORD

FROM: Russ McHugh

13 DEC 74

Circa 11:30 AM go call from Bud O. who was returning my earlier call to him. Purpose of my call was to see if he had heard anything new on DFI. But said all he knew was that he had done as Rebalado had in-

structed him, i.e., to cancel all advance bookings for DFI. What Bud didn't know was what was the status of prior bookings that had not been used that he had issued to us. But said only way to find that out was to check with O'Brien.

Called G. O'Brien and asked about status of bookings. Gery said that we had none. I asked him if I could get a booking from him for a load. He said no, we could not get a booking and that I should talk to Semack. Said Semack was out and would not be back until 2:30 to 3:00 today.

Called Semack. Intention of my call was to see if I could get a booking for a 40' Open top to handle Marr load. If his response was a visceral "no", I was prepared to explain that it would not be LTL but TL movement of steel pipes loaded at customer's dock, that customer had called ysdy looking for us to move in requested equipment, that only TTT could supply the equipment, that would be loaded outside of 50 mile Zone of NY (i.e., Boston) and on what tariff basis was his company denying us the equipment.

Semack not in, left my number for him to call back. At this time is 4:00 and probably will not call back.

Bob W. says can't get any bookings from Sealand people he deals with, wait until Monday. Sealand, if true to form, will deny us booking on moves ex: Boston because is their opinion that freight containerized within 50 miles of Boston is subject to ILA stuffing, even though they don't service the port—that is, even though PRMSA doesn't service the port. Semack had expressed same conviction during our first chat on Tuesday.

Personal opinion: Semack or whomever he would refer me to would have said that they are denying us trailer because (1) we are loading within 50 miles of port of Boston, and (2) even though this not consolidated LTL Shipments, DFI is not beneficial owner of cargo.

Because of SL group position and Semack's earlier and similarly stated conviction, seems that we not going to be able to handle this Marr load without subjecting ourselves to $1000 fine or stripping and restuffing charge.

588

589

IMPORTANT: READ YOUR INSTRUCTION PAGE

SEA-LAND SERVICE, INC.

SHORT FORM THROUGH BILL OF LADING

(NOT NEGOTIABLE UNLESS CONSIGNED "TO ORDER OF" AND IDENTIFIED AS ORIGINAL)

SEA-LAND SERVICE DOCK RECEIPT COPY

FOR PUERTO RICAN AND VIRGIN ISLAND SHIPMENTS ONLY

ATE	SHIPPER'S BILL OF LADING NO. OR FORWARDER'S REFERENCE	ORIGINATING CARRIER	SEA-LAND BOOKING NO.
1 2 74	150095 Seal#LifChigo 01260/01261	Lifschultz Fast Frt	I-05534

ESSEL / VOYAGE NO.	CONTAINERS LOADED				COMM. CODE	FNH
	BOX NO.	SEAL NO.	NO. OF PIECES	WEIGHT		21836
S. S. NEW ORLEANS 145	150095	M0				FOR OFFICE USE ONLY

CONSIGNED TO: (NAME AND COMPLETE ADDRESS)	STORE DOOR DELIVERY (NAME-STREET-ADDRESS-CITY)	SHIPPER: (NAME AND COMPLETE ADDRESS)
San Nuan Freight Forwarders Inc Carolina, Puerto Rico	☒ NOT REQUIRED — UNLESS CHECKED, DELIVERY WILL BE PERFORMED ENTER "SAME" IF DELIVERY IS TO BE MADE TO CONSIGNEE ADDRESS	SanJuan Freight Inc. %Lifschultz Fast Freight Inc. 1300 So. Dearborn Avenue Chicago, Ill.

END ARRIVAL NOTICE TO

ROUTING	PORT OF LOADING	PORT OF DISCHARGE AND/OR TERMINAL	OTHER	ORIGIN OF SHIPMENT IF OTHER THAN THE ABOVE: -SHIPPER- -CITY- -STATE-
EA-LAND SERVICE, INC.	Pt. Elizabeth	☒ SAN JUAN ☐ PONCE ☐ MAYAGUEZ ☐ ARECIBO (LTL ONLY)		

NO. OF PACKAGES	MARKS AND DESCRIPTION OF INDIVIDUAL COMMODITIES Type of Packages - Full Description of Merchandise - Measurements Where Required	GROSS WEIGHT IN POUNDS (PER COMMODITY)	MEASUREMENT IN CUBIC FEET (PER COMMODITY)	EXPORT DECLARATION DATA: D OR F	COMMODITY NO.	NET QUANTITY (STATE UNIT)	VALUE (NEAREST $)	RATE	AMOUNT
51	Pcs Refrigerators, Household NOS	16249	1700	D			24000.00	50	850 00
447	pcs Boxes Iron or Steel	2066	125	D			15000.00	90	112 50
488	pcs Lighting Fixtures	1568	65	D			4300.00	86	55 90
10	Ctns Auto Parts	531	7	D			1000.00	76	5 32
66	Ctns Magazines	1327	37	D			3760.00	76	28 12
6	Ctns Printed Matter	95	2	D			350.00	76	1 52
1068	pcsttl	21836	1936						

Freight Charges Payable At Destination

RECEIVED PUERTO RICAN DIV.

INSURANCE OPTION PER PUBLISHED TARIFFS & POLICIES (SEE REVERSE SIDE)	TOTALS	21836	1936	TOTAL OCEAN FREIGHT 1053 36

INSURANCE COVERAGE ☐ MARINE RISKS ☐ ALL RISKS ☐ REEFER CLAUSE ☐ WAR SR & CC — VALUE $

If Export Declaration Section of this form is completed, Sea-Land Service, Inc. is hereby authorized to act as forwarding agent for export control and customs purposes. (FMC Appl.#30) The exporter declares that all information contained in the Export Declaration Section of this Bill of Lading is true and correct and that he is aware of the penalties provided by law for making false or misleading statements.

Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding _____ Per _____

23	PICK-UP	LBS.@	
22	LANDING	LBS.@	
22	LANDING	1936 CU. FT. @	22 42 59
16	DELIVERY	LBS.@	
21	INSURANCE ON $	@	
18	DOCUMENTATION		
56	OTHER B/C 2%		31 60
		TOTAL CHARGES	1137 55

SHIPPER, BY: _____ DATE

CARRIER, BY: _____ SIGNATURE _____ DATE

DISTRIBUTION PAGE

SHORT FORM THROUGH BILL OF LADING

(NOT NEGOTIABLE UNLESS CONSIGNED "TO ORDER OF" AND IDENTIFIED AS ORIGINAL)

SHIPPER'S BILL OF LADING NO. OR FORWARDER'S REFERENCE

SEA1160319 Bill No. of USA-ACE 15

ORIGINATING CARRIER: Charles Lauter Inc.

FOR PUERTO RICAN AND VIRGIN ISLAND SHIPMENTS ONLY: 013-00707 BOOKING 31026

HOUSTON 174

HOUSTON 174

CONTAINERS LOADED

VOYAGE NO.	SEAL NO.	NO. OF PIECES	WEIGHT
150045	03514/5		

COMM. CODE | FMN

FOR OFFICE USE ONLY

530935

CONSIGNED TO (NAME AND COMPLETE ADDRESS)

San Juan Freight Forwarders, Inc.
% Office No: 2000
[illegible], Puerto Rico

Port: Elizabeth

SERVICE, INC.

STORE DOOR DELIVERY (WHERE AUTHORIZED BY CITY): NOT REQUIRED | UNLESS CHECKED, DELIVERY WILL BE PERFORMED

ENTER "SAME" IF DELIVERY IS TO BE MADE TO CONSIGNEE ADDRESS

PORT OF DISCHARGE AND/OR TERMINAL: OCEAN | FORCE | INLAND (CARRIER USE ONLY) | OTHER

SHIPPED (NAME AND COMPLETE ADDRESS)

San Juan Freight Forwarders, Inc.
% Lifschultz Fast Freight Inc.
1200 South Dearborn Avenue
Chicago, Ill.

ORIGIN OF SHIPMENT IF OTHER THAN THE ABOVE: -SHIPPER- -CITY- -STATE-

NO. OF PACKAGES	MARKS AND DESCRIPTION OF INDIVIDUAL COMMODITIES (Seal Packages • Full Description of Merchandise • Measurements Where Required)	GROSS WEIGHT IN POUNDS (PER COMMODITY)	MEASUREMENT IN CUBIC FEET (PER COMMODITY)	EXPORT DECLARATION DATA: DUNS	COMMODITY NO.	NET QUANTITY (STATE UNIT)	VALUE (NEAREST $)	RATE	AMOUNT
2	/L Freight All Kinds	29637	1750					TL	
	TOTALS	29637	1750						

FREIGHT BILL

RECEIVED
PUERTO RICAN DIV.
MAY 29 1973
Trailer Interchanged Freight Rel Counter
SEAL
BY

TOTAL OCEAN FREIGHT 12375

33	PICK-UP LBS.		
22	LANDING LBS.	T/L	3900
22	LANDING CU. FT.		
16	DELIVERY LBS.		
21	INSURANCE ON $		
18	DOCUMENTATION		
30	OTHER		

TOTAL CHARGES 1,774 15

OPTIONS PER PUBLISHED TARIFFS & POLICIES (SEE REVERSE SIDE)

VALUE

ALL RISKS | FREEZER | WAR SR & CC

[illegible] dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. The agreed value of the property is hereby specifically stated by the shipper to be not exceeding ____ Per

CARRIER, BY

DATE | SIGNATURE | DATE

R.N.S.A. #28
Rejected

Bof 1724
G.O.

ISSUING TERMINAL: ELIZABETH | FREIGHT BILL NO.: 901-530935

5-24-73 1/C 1174

1/1 | MAY 23 1973

150045

1 | 1

2-1-7 X

72 | 72 | 73

E499990

F 15940 | 1750

29637

SEALAND SERVICE, INC.

Item 150 NMC F 21 provides that all LTL shipments 3000 lbs and [illegible] less than 700 CF must be accorded delivery service in Puerto Rico at the rates provided for such service. Exceptions--Household Goods, temp control cargo and pieces exceeding 15 feet.

IMPORTANT: READ YOUR INSTRUCTION PAGE

SEA-LAND SERVICE, INC.

SHORT FORM THROUGH BILL OF LADING

(NOT NEGOTIABLE UNLESS CONSIGNED "TO ORDER OF" AND IDENTIFIED AS ORIGINAL)

SEA-LAND SERVICE DOCK RECEIPT COPY

D R NO. S-1170

3

FOR PUERTO RICAN AND VIRGIN ISLAND SHIPMENTS ONLY

R-NYSA 1-2C Rec'd

TE	SHIPPER'S BILL OF LADING NO. OR FORWARDER'S REFERENCE	ORIGINATING CARRIER	SEA-LAND BOOKING NO.
1 4 74	150243	Lifschultz Fast Freight	

SSEL — VOYAGE NO.: CHICAGO V44

CONTAINERS LOADED

BOX NO.	SEAL NO.	NO. OF PIECES	WEIGHT
150248			

COMM. CODE

FNH 20468

FOR OFFICE USE ONLY 1231132

VSIGNED TO: (NAME AND COMPLETE ADDRESS)
San Juan Freight Forwarders, Inc.
P O Box 209
Carolina, Fuerto Rico

I ARRIVAL
CE TO

STORE DOOR DELIVERY NAME-STREET-ADDRESS-CITY ☒ NOT REQUIRED — UNLESS CHECKED, DELIVERY WILL BE PERFORMED

ENTER "SAME" IF DELIVERY IS TO BE MADE TO CONSIGNEE ADDRESS

SHIPPER: (NAME AND COMPLETE ADDRESS)
San Juan Freight Forwarders, Inc.
% Lifschultz Fast Freight Inc.
28 No. Franklin
Chicago, Ill.

TING: LAND SERVICE, INC.

PORT OF LOADING: Ft. Elizabeth

PORT OF DISCHARGE AND/OR TERMINAL ☐ SAN JUAN ☐ PONCE ☐ MAYAGUEZ ☐ ARECIBO (LTL ONLY) OTHER

ORIGIN OF SHIPMENT IF OTHER THAN THE ABOVE -SHIPPER- -CITY- -STATE-

NO. OF PACKAGES	MARKS AND DESCRIPTION OF INDIVIDUAL COMMODITIES Type of Packages - Full Description of Merchandise - Measurements Where Required	GROSS WEIGHT IN POUNDS (PER COMMODITY)	MEASUREMENT IN CUBIC FEET (PER COMMODITY)	EXPORT DECLARATION DATA: D OR F	COMMODITY NO.	NET QUANTITY (STATE UNIT)	VALUE (NEAREST $)	RATE	AMOUNT
25	Ctns Shoes	800	46	D			1500.00	76	3496
80	Ctns Auto Pts	1562	43	D			3500.00	76	32 68
56	Ctns Cloth or Fabrics	940	80	D			3890.00	59	4720
190	Ctns Paper Articles NOS	4693	178	D			5700.00	41	52 99
173	Ctns Furniture, office & Parts	10511	1500	D			10000.00	56	8460
10	Drums Liquid Soap	1750	150	D			1500.00	246	4305
4	Ctns Elec Cable	212	2	D			75.00	95	190
							PUP		ARR CHG.
								JAN 4	1974
							Trailer Interchange		Not Pooled
							P/L		

ANCE OPTION PER PUBLISHED TARIFFS & POLICIES (SEE REVERSE SIDE) — TOTALS 20468 1999

VALUE

IRANCE ERAGE ☐ MARINE RISKS ☐ ALL RISKS ☐ REEFER CLAUSE ☐ WAR SR & CC $

ort Declaration Section of this form is completed, Sea-Land Service, Inc. is hereby authorized to act as forwarding agent for control and customs purposes. (FMC Appl. #30) The exporter declares that all information contained in the Export Declaration of this Bill of Lading is true and correct and that he is aware of the penalties provided by law for making false or misleading ents.

he rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. ed or declared value of the property is hereby specifically stated by the shipper to be not exceeding _____ Per _____

TOTAL OCEAN FREIGHT			1072 77
23 PICK-UP	LBS.@		
22 LANDING	17 50 LBS.@	5.4	95
22 LANDING	1671 CU. FT.@	2.2	36 76
16 DELIVERY	LBS.@		
21 INSURANCE ON $	@		
18 DOCUMENTATION			
29 OTHER	39% Surcharge		37 18
(50)	TOTAL CHARGES		

ER, BY: _____ DATE

SIGNATURE

CARRIER, BY: _____ DATE

SIGNATURE

IMPORTANT: READ YOUR INSTRUCTION PAGE

SEA-LAND SERVICE, INC.

SHORT FORM THROUGH BILL OF LADING

(NOT NEGOTIABLE UNLESS CONSIGNED "TO ORDER OF" AND IDENTIFIED AS ORIGINAL)

SEA-LAND SERVICE DOCK RECEIPT COPY

D/R NO. 1016

FOR PUERTO RICAN AND VIRGIN ISLAND SHIPMENTS ON

DATE	SHIPPER'S BILL OF LADING NO. OR FORWARDER'S REFERENCE	ORIGINATING CARRIER	SEA-LAND BOOKING NO.
12 13 73	150249 Seal No. LifCh101254/55	Lifschultz F.Frt	11-00523

VESSEL: BOSTON V108 VOYAGE NO.: 1

CONTAINERS LOADED

BOX NO.	SEAL NO.	NO. OF PIECES	WEIGHT
15 0249			

COMM. CODE

FNH

FOR OFFICE USE ONLY

R-NY SA-2D Regular

CONSIGNED TO: (NAME AND COMPLETE ADDRESS)

S.J. F. F. Inc.
Road 887 Hm 0.8
Carolina, Puerto Rico

SEND ARRIVAL NOTICE TO

STORE DOOR DELIVERY - NAME-STREET-ADDRESS-CITY — XX NOT REQUIRED — UNLESS CHECKED, DELIVERY WILL BE PERFORMED

ENTER "SAME" IF DELIVERY IS TO BE MADE TO CONSIGNEE ADDRESS

SHIPPER: (NAME AND COMPLETE ADDRESS)

San Juan Freight Forwarders, Inc.
1300 So. Dearborn Avenue
Chicago, Ill.

ROUTING	PORT OF LOADING	PORT OF DISCHARGE AND/OR TERMINAL	OTHER	ORIGIN OF SHIPMENT IF OTHER THAN THE ABOVE: -SHIPPER- -CITY- -STATE-
SEA-LAND SERVICE, INC.	Pt. Elizabeth	☒ SAN JUAN ☐ PONCE ☐ MAYAGUEZ ☐ ARECIBO (LTL ONLY)	981	

NO. OF PACKAGES	MARKS AND DESCRIPTION OF INDIVIDUAL COMMODITIES Type of Packages - Full Description of Merchandise - Measurements Where Required	GROSS WEIGHT IN POUNDS (PER COMMODITY)	MEASUREMENT IN CUBIC FEET (PER COMMODITY)	EXPORT DECLARATION DATA: D OR F	COMMODITY NO.	NET QUANTITY (STATE UNIT)	VALUE (NEAREST $)	RATE	AMOUNT
370 Pcs	Auto Air Contitioning Parts	16397	1800	D		4099.00		56 M	$1008.0
	Freight Charges ppayable at destinatoj						s/c	3%	30.2
	TOTALS	16397	1800						

INSURANCE OPTION PER PUBLISHED TARIFFS & POLICIES (SEE REVERSE SIDE)

TOTAL OCEAN FREIGHT $1038.2

INSURANCE COVERAGE ☐ MARINE RISKS ☐ ALL RISKS ☐ REEFER CLAUSE ☐ WAR SR & CC — VALUE $

23	PICK-UP	LBS.@		
22	LANDING	LBS.@		
22	LANDING	1800 CU. FT. @	022	39.6
16	DELIVERY	LBS.@		
21	INSURANCE ON $	@		
18	DOCUMENTATION			3.0
30	OTHER			

If Export Declaration Section of this form is completed, Sea-Land Service, Inc. is hereby authorized to act as forwarding agent for export control and customs purposes. (FMC Appl. #30) The exporter declares that all information contained in the Export Declaration Section of this Bill of Lading is true and correct and that he is aware of the penalties provided by law for making false or misleading statements.

Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding _____ Per _____

SHIPPER, BY: _____ SIGNATURE _____ DATE

CARRIER, BY: _____ SIGNATURE _____ DATE

READ YOUR INSTRUCTION PAGE

SHORT FORM THROUGH BILL OF LADING

NOT NEGOTIABLE UNLESS CONSIGNED "TO ORDER OF" AND IDENTIFIED AS ORIGINAL

D1038

FOR PUERTO RICAN AND VIRGIN ISLAND SHIPMENTS ONLY

ISSUING TERMINAL: ELIZABETH 201-33100

FREIGHT BILL #

7/20/74

SHIPPER'S BILL OF LADING NO. OR FORWARDER'S REFERENCE

ORIGINATING CARRIER

SEA-LAND BOOKING NO.

VOYAGE NO.: 130

VESSEL: BOSTON

CONTAINERS LOADED

BOX NO.	SEAL NO.	NO. OF PIECES	WEIGHT
107173		567	27,926

COMM. CODE

PIER

FOR OFFICE USE ONLY: 331009

9-30-74 E0-1305 JUL 31 5

281

107173

10 | 11 | 8 9 10

72

72

73 1.50

951 | 64.78

10590 | 1602

27926

CONTAINERS UNLOADED ☑ | UNDER SHADE ☐ | IN GRADE ☐

CONSIGNEE (NAME AND COMPLETE ADDRESS)

San Juan Freight Forwarders Inc.
Carolina, Puerto Rico

STORE DOOR DELIVERY (NOT REQUIRED) XX

UNLESS CHECKED, DELIVERY WILL BE PERFORMED

SHIPPER (NAME AND COMPLETE ADDRESS)

San Juan Freight Forwarders Inc.
1300 Dearborn Avenue
Chicago, Illinois

ENTER "SAME" IF DELIVERY IS TO BE MADE TO CONSIGNEE ADDRESS

SEA-LAND SERVICE, INC.

POINT OF LOADING: CLK

POINT OF DISCHARGE AND/OR TERMINAL: XX SAN JUAN ☐ PONCE ☐ MAYAGUEZ ☐ OTHER (LIVE ONLY)

ORIGIN OF SHIPMENT IF OTHER THAN THE ABOVE: -SHIPPER- -CITY- -STATE-

NO. OF PACKAGES	MARKS AND DESCRIPTION OF INDIVIDUAL COMMODITIES (Type of Packages - Full Description of Merchandise - Measurements Where Required)	GROSS WEIGHT IN POUNDS (PER COMMODITY)	MEASUREMENT IN CUBIC FEET (PER COMMODITY)	EXPORT DECLARATION DATA: DOM./F.	COMMODITY NO.	NET QUANTITY (STATE UNIT)	VALUE (NEAREST $)	RATE	AMOUNT
10	ctns Cloth or Fabric NOS	720	38	D				21	30 78
6	ctns Elect Appl Equip NOS	325	1.2	D				90	10 80
7	ctns Frocks	84	15	D				68	10 20
4	ctn Bags Paper Lined	764	13	D				2.37	17 77
1	ctn Stamping	316	10	D				22	2 20
5	ctns Cleaner o/t Fiber	187	9	D				1.62	3 03
509	Pen Paper & Paper Products NOS	25530	1505	D				42	632 10
567	TOTAL PIECES	27926	1602						

TRAILER SEAU 107173
Seal # 0000

RECEIVED

	TOTAL OCEAN FREIGHT		714 33
23	PICK-UP LBS.#		
22	LANDING 951 LBS.#	06	57
22	LANDING 1.50 CU. FT. #	2.5	39 50
16	DELIVERY LBS.#		
21	INSURANCE ON $		
18	DOCUMENTATION		100
31	OTHER	11%	72 58
	TOTAL CHARGES		83798

INSURANCE COVERAGE: ☐ MARINE RISKS ☐ ALL RISKS ☐ DEFENSE CLAUSE ☐ WAR SR & CC $

VALUATION PER PUBLISHED TARIFFS & POLICIES (SEE REVERSE SIDE)

If export declaration Section of this form is completed, Sea-Land Service, Inc. is hereby authorized to act as forwarding agent for export control and customs purposes. (Title 13 Appl. 30) The operator declares that all information contained in this export declaration is true and correct and that he is aware of the penalties provided by law for making false or misleading statements.

Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding $ per

SEA-LAND SERVICE, INC. property.

CARRIER, BY: ELIZABETH PIERS

DATE — SIGNATURE — DATE

SEA-LAND SERVICE, INC

R.N.I/SA 25
Rejected

LC

READ YOUR INSTRUCTION PAGE

SHORT FORM THROUGH BILL OF LADING

(NOT NEGOTIABLE UNLESS CONSIGNED "TO ORDER OF" AND IDENTIFIED AS ORIGINAL)

FOR PUERTO RICO AND VIRGIN ISLAND SHIPMENTS ONLY

DATE: 11 8 73

SHIPPER'S BILL OF LADING NO. OR FORWARDER'S REFERENCE: SEAU 88957 Seal #LifChi01213/14

ORIGINATING CARRIER: Lifschultz F Frt.

SEA-LAND BOOKING NO.: 14-05330

VESSEL: R.N.S.M. 2-4 Rejected

VOYAGE NO.: PORTLAND V167

CONTAINERS LOADED

BOX NO.	SEAL NO.	NO. OF PIECES	WEIGHT
91957			

COMM. CODE

FMH: 18605

FOR OFFICE USE ONLY: 1.78868

CONSIGNED TO: (NAME AND COMPLETE ADDRESS)

San JuanFreihgt Inc.
Carolina, Puerto Rico

END USE:

STORE DOOR DELIVERY NAME-STREET-ADDRESS-CITY ☐ NOT REQUIRED — UNLESS CHECKED, DELIVERY WILL BE PERFORMED

SHIPPER: (NAME AND COMPLETE ADDRESS)

San Juan Freight Forwarders, Inc.
28 No. Franklin Avenue
Chicago, Ill.

ROUTING: SEA-LAND SERVICE, INC.

PORT OF LOADING: Port Elizabeth

ENTER "SAME" IF DELIVERY IS TO BE MADE TO CONSIGNEE ADDRESS

PORT OF DISCHARGE AND/OR TERMINAL: ☐ SAN JUAN ☐ PONCE ☐ MAYAGUEZ ☐ ARECIBO (LCL ONLY)

ORIGIN OF SHIPMENT IF NOT THE ABOVE: -SHIPPER- -STAT.-

NO. OF PACKAGES	MARKS AND DESCRIPTION OF INDIVIDUAL COMMODITIES (Type of Packages - Full Description of Merchandise - Measurements Where Required)	GROSS WEIGHT IN POUNDS (PER COMMODITY)	MEASUREMENT IN CUBIC FEET (PER COMMODITY)	EXPORT DECLARATION DATA: DOR F	COMMODITY NO.	NET QUANTITY (STATE UNIT)	VALUE (NEAREST $)	RATE	AMOUNT
2	Ctns Valves	90	1	D		160.00		209	1 85
7	Ctns Screws, Iron or Steel	248	7	D		960.00		129	3 20
53	Ctns Parts, machine	1376	28	D		5000.00		209	28 76
414	Ctns Brooms or Mops	10990	1300	D		8005.00		61	793 00
100	Ctns Binders or Covers	378	6	D		350.00		75	4 50
3	Ctns Fans Electric	45	2	D		125.00		82	1 64
2	Ctns Blowers or Exaust	198	3	D		350.00		197	3 90
9	Ctns Hampers	280	20	D		500.00		73	14 60
4	Palleta Paperboard	5000	150	D		4500.00		40	60 00
			1517						
		18605							

INSURANCE OPTION PER PUBLISHED TARIFFS & POLICIES (SEE REVERSE SIDE)

TOTALS

INSURANCE COVERAGE: ☐ MARINE RISKS ☐ ALL RISKS ☐ REEFER CLAUSE ☐ WAR SR & CC — VALUE $

TOTAL OCEAN FREIGHT 911 48

23	PICK-UP	LBS.@		—
22	LANDING	1912 LBS.@	5.4	103
22	LANDING	1328 CU. FT.@	2.2	29 22
16	DELIVERY	LBS.@		—
21	INSURANCE ON $			—
10	DOCUMENTATION			3 00
30	OTHER			
			TOTAL CHARGES	944 73

If Export Declaration Section of this form is completed, Sea-Land Service, Inc. is hereby authorized to act as forwarding agent for export control and customs purposes. (FMC Appl. #30) The exporter declared that all information contained in the Export Declaration section of this Bill of Lading is true and correct and that he is aware of the penalties provided by law for making false or misleading statements.

Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding _____ Per _____

SHIPPER, BY: _____ SIGNATURE _____ DATE

CARRIER, BY: _____ SIGNATURE _____ DATE

SEA-LAND

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

Case Nos. 2-CC-1364, 2-CE-75, 2-CC-1365

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION AND NEW YORK SHIPPING ASSOCIATION, INC.

and

DOLPHIN FORWARDING, INC.

and

SAN JUAN FREIGHT FORWARDERS, INC.

FILE Judges Div.

FILE IN FORMAL FILE

Received Oct. 19, 1977 Dlv. of Judges NLRB Wash., D.C.

NYSA'S DIRECT CASE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JOHN M. HAYNES, being duly sworn deposes and says:

I am the Executive Vice President of Respondent, New York Shipping Association, Inc. ("NYSA"). I submit the following direct testimony and annexed exhibits on behalf of Respondent, NYSA.

I was first employed by NYSA in 1958 as special assistant to NYSA's Chairman. Prior to my employment

with NYSA, I was employed by American President Lines, first as a seagoing officer and later as its port captain or terminal manager at its pier facility in the Port of New York. I have from time to time physically observed the operations at most of the waterfront facilities in the Port of Greater New York. My duties and functions, first as special assistant to NYSA's Chairman, then as NYSA's Administrative Director, and now as Executive Vice President, have consisted of active participation in the negotiation, administration and implementation of labor contracts entered into by NYSA with the International Longshoremen's Association, AFL-CIO ("ILA"). I am intimately and personally aware of the facts and circumstances set forth in this direct case.

I. *Interested Persons*

A. *Employer Associations*

1. Council of North Atlantic Shipping Associations ("CONASA") is an unincorporated multi-employer bargaining association, which functions as the collective bargaining representative in negotiating and administering collective bargaining agreements with the International Longshoremen's Association, AFL-CIO ("ILA") covering terms and conditions of employment of longshore labor in the ports of Boston, New York, Providence, Philadelphia, Baltimore and Hampton Roads, on the North Atlantic coast of the United States. Its members are the various employer shipping associations operating in the six major North Atlantic ports, as follows:

The Boston Shipping Association, Inc.
Rhode Island Shipping Association, Inc.
New York Shipping Association, Inc. ("NYSA")
Philadelphia Marine Trade Association
Steamship Trade Association of Baltimore, Inc. and Hampton Roads Shipping Association

CONASA's constituent port association members, each negotiate and administer collective bargaining agreements with the ILA covering local conditions.

2. NYSA is an incorporated New York Not-for-Profit membership association which negotiates and administers collective bargaining agreements with ILA on behalf of its members. The membership of NYSA consists of stevedores, common carriers by water, carrier agents, terminal operators, lighterers, contracting guard service and other concerns functioning in waterfront related activities involving or related to the ocean shipment of cargo, freight and the transportation of passengers.

3. For many decades, beginning on the Atlantic and Gulf coasts commenced with negotiations between the ILA and its constituent locals, and NYSA in the Port of New York. After agreement had been reached with NYSA, the ILA would bargain with other ports. In 1956, a major demand of the ILA in New York negotiations was for the extension of bargaining on a coast-wide basis. After a lengthy strike that year the employer associations in the other North Atlantic ports agreed that NYSA could execute a master contract on behalf of itself and the other North Atlantic ports with respect to certain specified issues. In 1956, and in each of the succeeding collective bargaining periods, including the one ending September 30, 1971, master contracts covering the specified items were entered into by NYSA with the ILA for and on behalf of itself and the other North Atlantic employer associations. Prior to negotiations of the 1971-1974 contract with the ILA the constituent member associations of CONASA entered into an arrangement to form CONASA. Thereupon, negotiations commenced between CONASA and the ILA concerning various terms and conditions that would be applicable to all North Atlantic ports. Certain other items known as local working conditions would still be negotiated locally by each of the ports with ILA. On November 16, 1971, CONASA and the ILA formalized the scope of their negotiations in a memorandum of agreement, annexed hereto as Exhibit 1, which reads in pertinent part as follows:

> "1. ILA and CONASA agree to act as the collective bargaining representatives for their constituent locals and members, as referred to

above, on the seven master contract items which are as follows:

A. Wages
B. Hours
C. Contributions to the Welfare Plans (but not the benefits)
D. Contributions to the Pension Plans (but not the benefits)
E. Term of the Agreement
F. Containerization [which includes the Rules on Containers]
G. Lash

All other terms and conditions of employment are local items which will be negotiated locally by each of the above port associations and their ILA locals in each respective port."

B. *Union*

4. ILA, an unincorporated labor organization, has for more than 50 years represented longshore employees who perform the work of loading and unloading ships, and all other functions incident thereto in the Port of New York as well as in all other applicable ports on the East and Gulf coasts of the United States. ILA has been certified by the NLRB as the exclusive bargaining representative of said employees (*See, Matter of New York Shipping Association*, 116 NLRB 1183 (1956)). It has negotiated and entered into collective bargaining agreements with CONASA, NYSA, and with the other constituent member associations of CONASA, covering the terms and conditions of employment of these employees in the CONASA ports. Similarly, ILA negotiates and enters into collective bargaining agreements covering the terms and conditions of employment of these employees in other ports on the East and Gulf coasts of the United States.

C. *Joint Labor Management Bodies*

5. The CONASA-ILA Container Committee is a joint labor-management board formed and created pursuant to the provisions of the 1974-77 collective bargaining agreement between CONASA and ILA for the purpose of implementing and administering in all six CONASA ports the CONASA-ILA Rules on Containers to insure clarity and uniformity of interpretation and enforcement. It is composed of an equal number of representatives of labor and management—one CONASA and one ILA representative from each CONASA port.

6. There is in each CONASA port a joint labor-management committee consisting of an equal number of union and management representatives formed and created pursuant to the provisions of the 1974-77 collective bargaining agreement between CONASA and ILA and to the provisions of the applicable local ILA collective bargaining agreement in each CONASA port. Each joint committee is authorized and responsible for the implementation and administration, within its particular port area, of the CONASA-ILA Rules on Containers. Each joint committee is empowered *inter alia* to hear and pass judgment on any violations of the CONASA-ILA Rules on Containers.

7. The NYSA-ILA Contract Board is a joint labor-management board consisting of an equal number of NYSA and ILA representatives. It is charged with the implementation and administration, within the Port of Greater New York, of the 1974-77 CONASA-ILA collective bargaining agreement and the local collective bargaining agreements entered into between NYSA and ILA. The NYSA-ILA Contract Board also acts as the NYSA-ILA Container Committee whose jurisdiction encompasses the CONASA-ILA Rules on Containers, their enforcement and administration. The NYSA-ILA Container Committee is empowered *inter alia* to hear and pass judgment on any violations of the CONASA-ILA Rules on Containers occurring in the Port of Greater New York.

D. *ILA's Traditional Work Jurisdiction*

8. For many decades, ILA members on the Atlantic and Gulf coasts have handled, to the exclusion of all other workers, all of the work in connection with the loading and discharging of cargo on ships. In addition, the ILA workers have also performed work on the piers which is known as terminal work. Terminal work includes all services rendered by contracting stevedores and steamship carriers either after the cargo has been discharged by the ship or before the cargo has been put aboard the ship. This work has included all work in connection with the preparation of such cargo for loading aboard the ship and all work preparatory to delivery of the cargo to inland carriers, after the cargo is discharged from the ship. The receipt and delivery of cargo has also been performed by ILA workers. Traditionally, export cargo would normally be delivered by truck, rail or lighter to the terminal facility. ILA longshoremen would receive (and thereafter handle) the cargo from the tailgate of the truck, from the door of the railcar and from the first place of rest after removal from a lighter. This work was handled piece by piece and parcel by parcel.

9. Prior to the use of special equipment such as hi-los, longshoremen would lift the cargo, piece by piece, into hand trucks and move it to a place of rest in the terminal building. Here, the cargo would be prepared for loading aboard the vessel. ILA checkers would tally the cargo, either truckside or at the terminal; ILA longshoremen would make up the drafts and pallets in preparation for lifting the cargo into the ship; ILA coopers would repair any damage to that cargo; ILA carpenters would prepare wooden boxes or containerlike devices where special security or care in handling was required; and ILA sorters might sort the cargo by type, port, hatch, etc.

10. After this cargo was prepared for loading, ILA ship gang workers would receive the cargo at a place of rest at the end of ship's tackle. It would be brought to this point by ILA terminal workers. From this place of rest, the cargo would be lifted into the ship's hold. In

order to properly safeguard the cargo and protect the stability of the vessel, it was necessary for ILA carpenters to lay dunnage, make wooden separations and build up floors in the hold on which cargo could rest. Here, ILA longshoremen would again take the cargo, piece by piece, and place it in secure positions throughout the hold or hatch, following the loading plan of the ship's officer or stevedore supervision. Thus, cargo would have to be loaded so that it was readily accessible at the various ports at which the ship might call. Cargo which was to be removed at the first port-of-call would have to be so placed that the longshoremen at that port could remove such cargo without disturbing other pieces of cargo destined for later ports-of-call. The ship's labor also had to take into consideration the weight, density, fragility, combustibility and other elements relating to particular pieces of cargo. In brief, the longshoremen performed a tedious, manual task which required many hours of labor as well as the skill attached to the know-how of ship's stowage and cargo peculiarities.

11. With respect to import cargo, the work performed by the longshoremen and other ILA crafts was substantially similar. A vessel arrived at the Port of New York which, in all probability, contained cargo for other North Atlantic ports such as Boston, Philadelphia, Baltimore or Hampton Roads. The New York longshoremen would identify the New York cargo and remove it from the ship. At the same time, they would be required to protect the cargo remaining aboard the ship by shoring or other devices. Prior to 1962, most vessels in the Port also had ILA hatch checkers who would tally the cargo as it was removed from each hatch and give a report to the terminal supervision, on a piece-by-piece basis, of the cargo actually removed. After being put to a place of rest on the pier, the cargo would be taken either by hand, (or later by hand truck, and even later by hi-lo) into the terminal where it would be placed in designated areas. There, the cargo would be prepared for delivery to the consignee-drafts and pallets would be broken down, wooden boxes would be opened and unloaded, cargo would

be sorted in accordance to type, size, shape, consignee, etc. Fragile or highly pilferable cargoes would be placed into special security areas knows as cribs, security lockers, etc. Thereafter, the cargo would be delivered to the consignee. If the consignee had sent a truck to the pier, ILA longshoremen would take the cargo from the terminal and physically load the truck while ILA checkers kept a tally of this loading process. Similar functions were performed in respect to railcars and lighters or barges.

12. World War II brought about a use of various box-like devices into which cargo could be stored. The military had used such devices for special cargoes such as munitions, food stuffs, weapons, etc. After WW II, certain of the steamship carriers acquired some of the boxes and used them for highly pilferable, fragile or hazardous cargoes. However, such use was infrequent and of little consequence. On an average ship, such cargo might relate only to less than a fraction of one percent of the total cargo on a particular ship. However, the loading of cargo into, and the discharging of cargo out of, such devices was always performed by ILA labor at the pier or terminal. As these containers or devices became more common, certain exceptions began to develop. One such exception pertained to United States Mail. Prior to the use of these boxes, U.S. Mail was normally delivered to the pier in large canvas sacks. The eventual use of 8' x 8' x 8' boxes (as well as some smaller) by the U.S. Mail was considered somewhat akin to the large canvas sacks. Further, the ILA longshoremen have historically had an intense patriotic nature. It was considered that the U.S. Mail should be permitted to move with facility, ease and little restriction. The same consideration was true with respect to the personal effects of military personnel. The ILA felt it had a special obligation to the embarking soldier or the returning warrior whose personal effects were entitled to special protection and quick transport.

13. Insofar as household goods were concerned, there was a special historical reason which emanated from the early 1930's. At that point in time, refugees from Nazi Germany were emigrating to the United States. Such

household effects as they were able to take with them were almost invariably placed in large wooden crates similar to a household moving van. The total amount of such personal household effects were negligible and again the longshoremen permitted their removal on and off the piers. When the Puerto Rican migration commenced in the period following World War II the same considerations were applied to such migrants.

14. The work opportunities thus presented created the approximately 43 million hours of work which longshoremen performed in 1958 in handling 12 million long tons of cargo. Thus, (at that time) productivity in the port averaged about .3 of a ton of cargo for every manhour worked. At the present time, there are approximately 19 million tons of cargo being moved with approximately 19.5 million manhours. Thus, the productivity per manhour in the Port has increased by 300%. If the productivity of 1958 had remained on the same basis, there would be approximately 60 million workhours for the ILA in the Port of New York today. Exhibit 2 annexed hereto sets forth NYSA Employment Statistics setting forth for contract years ending 9/30/51 to 9/30/76 inclusive total ILA employees registered with the Waterfront Commission in the Port of New York, total hours worked, total wages paid and total Guaranteed Annual Income ("GAI") expenses incurred.

15. Of the 12,264 men now in the workforce, an average of 7,500 men are hired on a daily basis. Seldom does the daily hiring reach the 8,000 man mark. Containerization still left a substantial amount of work on the piers and terminals to be performed by ILA members. ILA longshoremen and other dockworkers have worked on stuffing and stripping containers at the piers from the very inception of containerization to the present time. Every container steamship line in the Port of New York maintains an LTL (less-than-trailer-load) facility at its piers where substantial numbers of containers have cargo loaded into the discharged out of such containers by ILA members. Cargo going into such containers is delivered to such facilities and is handled from trucks by ILA workers who physically load the cargo into con-

tainers. Similarly, cargo from such containers is discharged by ILA workers who deliver such cargo to delivery platforms for loading by other ILA workers into trucks. In the year 1975 it is estimated that over 2,000 ILA employees worked over 3 million manhours handling over 1.5 million LFL tons of cargo. The purpose and intent of the ILA in pressuring NYSA and its members was to maintain and preserve such LTL work for ILA employees.

16. From the very inception of containerization, the ILA resisted strenously the use of the container concept. The ILA opposed any concept which would take away any of the work traditionally performed by its members. This resistance has been manifested in strikes, wildcat job action, grievances, arbitrations and court actions. The first arbitration involving containerization is dated November 13, 1958. In this proceeding, clerks, checkers and longshoremen at United States Lines' Piers 59 and 74 on the North (Hudson) River in Manhattan refused to handle six containers consigned to Bremerhaven and to Antwerp. Four of these containers were Railway Express containers "said to contain household and military effects." The other two were Ford Motor Company boxes "said to contain auto parts." The arbitrator directed that these containers be handled but recommended ". . .that the parties promptly meet for the purpose of achieving a solution of the entire subject. . ." The ILA did not accept this decision. On the contrary, it issued instructions that it would not handle any containers for any steamship lines who had not engaged in container operations prior to October 1, 1956. The ILA sought to prohibit any change in the method of handling containers from that followed by steamship carriers prior to 1956. The Vice President of United States Lines had conceded the pre-1956 practice in the industry of loading and unloading containers at pierside with ILA labor when he stated at a meeting of the Port of New York Joint LRC (a joint labor-management board formed to enforce and administer collective bargaining agreements between NYSA and ILA) held on November 19, 1958:

> "Let me clarify something. We have handled containers *prior to 1956, but containers that were loaded on the pier. That is, the cartons are loaded in the containers on the pier, and discharged.* I am not going to mislead anybody." (*Emphasis added*)

For several weeks after the ILA's announcement, many containers in the Port were stopped. As a result of grievance discussions before the Port Arbitrator, on December 17, 1958, the Port Arbitrator issued an announcement that the ILA had agreed to handle containers for all companies engaged in the operations as of November 12, 1958 when the container matter was first brought before the Port of New York Joint Labor Relations Committee. Steamship companies not previously handling containers would give advance notice to the ILA of any such proposed new operations. In the meantime, the parties would negotiate with an attempt to reach a solution. The arbitrator announced further that in view of this agreement ". . .the container dispute currently in arbitration would accordingly be held in abeyance without prejudice to either party." Such negotiations and meetings were held for many weeks thereafter. However, no agreement could be reached and the parties entered the 1959 negotiations with containerization a major issue. It would remain a major issue for the next eighteen years and is the critical issue in the current longshore negotiations which, as of this date, are marked by a general longshore strike against all containership carriers on the East and Gulf Coasts.

E. *The 1959 ILA Negotiations*

17. Various proposals and counter-demands were placed on the table:

(a) ILA's persistent demand was that all containers ". . .be opened on the pier and discharged by ILA."

(b) NYSA's initial counter-demand was for contractual language that would protect the "un-

fettered" rights of employers "to inaugurate and regulate automation operations. . ."

(c) On October 20, 1959, NYSA sought to satisfy the union's principal concern with consolidators by proposing a penalty of 25 cents per gross ton on cargo in containers loaded by forwarders and consolidators who did not employ ILA labor.

(d) This proposal was rejected out of hand by the ILA. In a proposal of October 29, 1959, the ILA demanded that the employers ". . .agree that their employees shall be protected against any job, work, and benefits losses which may result from unitized cargo or container use, and that their employees are entitled to a fair share from the benefits of increased efficiency."

18. After strenuous negotiations on this issued, the collective bargaining agreement of December 3, 1959 (covering the 3 year period from October 1, 1959 to September 30, 1962) recognized the right of employers "to use any and all types of containers without restriction or stripping by the Union." However, it was agreed that:

> "Any work performed in connection with the loading and discharging of containers for employer members of the NYSA which is performed in the Port of Greater New York whether on piers or terminals controlled by them, or whether through direct contracting out, shall be performed by ILA labor at longshore rates." (Section 8(c), Memorandum of Settlement, December 3, 1959).

The NYSA-ILA 1959 Memorandum of Settlement is attached as Exhibit 3. It was further agreed in the 1959 Memorandum of Settlement that the parties would negotiate, and on failure to agree, arbitrate the royalty to be paid on shipper load containers which are loaded or unloaded away from the pier by non-ILA labor. After a

lengthy arbitration was held on the container royalty matter, an award was issued on November 21, 1960 fixing the amount of the royalty at 35 cents per gross ton on conventional ships, 70 cents per gross ton on partially automated ships, and $1.00 per gross ton on fully automated ships. The Arbitration Award is attached as Exhibit 4.

F. *The Period Following the 1959 Negotiations—A Period of Labor Strife.*

19. The 1959 negotiations were no sooner completed before labor strife, in the form of wildcats and quicky stoppages, erupted throughout the Port in protest of the loss of job opportunities caused by containerization. The parties began the arduous task of applying the new contractual language to actual situations. The union's position during these many grievances was that the 1959 negotiations only permitted the free movement of containers in the area outside of the Port. After many work stoppages and months of discussion, NYSA issued the following statement to the ILA on February 28, 1962, to clarify NYSA's interpretation of Section 8(c) of the 1959 Memorandum of Settlement:

> "Where an employer member of NYSA supplies a container which is the property of such member, to a consolidator for loading or discharging of cargo in the Port of Greater New York, it will be stipulated that such container must be loaded or unloaded by ILA at longshore rates."

The February 28, 1962 Interpretation is attached as Exhibit 5. Thus, from February 28, 1962, the rule that ILA labor would strip and stuff a container of a steamship carrier supplied to a consolidator, which was the traditional custom and practice in the industry, was codified in the established labor relations law in the Port of New York.

20. This rule was shortly thereafter applied against Sea-Land Services, Inc., which was the inaugurator of fully-containerized operations, using specially designed

cellular container ships. Sea-Land first commenced full containership service in 1958 in the New York to Puerto Rico trade. In 1962, Sea-Land was found by the Joint NYSA-ILA Labor Relations Committee ("LRC"), to have violated the contract in supplying containers to consolidators. The minutes of the LRC proceeding is attached as Exhibit 6.

21. The fight against containerization was led by the ILA's President, Thomas W. Gleason, who has prophetically stated the impact of containerization on the job opportunities of the ILA's members. Thus, at the 1959 ILA Convention (July 13, 1959), Mr. Gleason stated:

> "I believe that the cargo container will be forced on shipping lines through competition . . .I am convinced that it has got to come, and when it does come, its effects on us can be tremendous. It is not too farfetched to estimate that we stand to lose, in the full force of the container use, 8,000 to 9,000 jobs in the New York area alone, and a proportionate number in all other ports. This amounts to 30% of the membership. . ."

G. *The Period from 1962 Through 1968*

22. The 1959 statement of President Gleason has continued as the basis for ILA policy in all ensuing negotiations. In 1962, NYSA was seeking to obtain relief from restrictive work practices under the collective bargaining agreement. After a lengthy strike, a Presidential mediation panel, headed by Senator Wayne Morse, recommended that the parties agree to a comprehensive study on manpower utilization and job security by the United States Department of Labor. This study was to be made during the term of the new 2-year agreement and the results of such study were to be the subjects of bargaining in the 1964 negotiations. As a result of the Government's intervention, no changes were made in the containerization agreement (Exhibit 3, p.2, 1959 Memorandum of Settlement, Section 8(c)), although the ILA had demanded that all containerized cargo be loaded or discharged by ILA labor only. The fact that the contract

language did not change, did not end the constant labor struggle against expanded containerization. Thereafter, containers found by the ILA, which it considered violated the contract were stopped. It had been the employer position that the provisions of Section 8(c) of the 1959 Memorandum of Settlement (Exhibit 3, p.2) applied only to containers owned or leased by employer members of NYSA. The ILA position was to the contrary. Grievances and work stoppages continued. Those that involved the supplying of the carriers' containers to consolidators were resolved in favor the the ILA; other situations for the most part went unresolved. Countless meetings held on the subject by representatives of both NYSA and ILA were unable to finally resolve the many troublesome issues.

23. At the advent of the 1964 negotiations, the ILA again made its demand that all containers be loaded and stripped by ILA deep-sea labor. However, the major issue in the 1964 negotiations related to the recommendations of the Department of Labor's Manpower Utilization Study which recommended certain changes in the work rules and additional job security for the worker. After lengthy arduous and strike-marked negotiations, an agreement was worked out giving the employers certain concessions in the area of manpower utilization and giving to the union members the first GAI plan in the industry. The containerization provisions of the labor agreement remained unchanged. No sooner had the contract been agreed to, than the ILA renewed its efforts in its fight against containerization. Again, there were many incidents involving stoppages of containers on the waterfront. In November of 1966, the ILA demanded that the agreement be reopened on the subject of containers. NYSA refused but did meet with the union over a long period of time in an attempt to find some common solution to this perplexing and long-continuing problem. Meetings were held in November, December of 1966 and January, February of 1967. NYSA on December 15, 1966 issued a motion proposing strict contract compliance with respect to the use of containers and proposing a joint study to assist workers who were displaced by

containerization. The inability of the parties to find areas of agreement apparently convinced the ILA that broad relief could only be attained in the course of the negotiations. By 1967, containerized cargo had grown substantially to approximately 2.6 million long tons, or approximately one-fifth of the cargo handled in the Port of New York. In 1967 Sea-Land Service, Inc. introduced the first fully-containerized vessel into the large North Atlantic trade. Many major steamship carriers then announced plans for embarking on container operations and many new and fast containerships were being built in shipyards throughout the world.

24. A full year before the 1968 negotiations commenced, the ILA held its conventions in Miami Beach, Florida, during the period July 10 to July 21, 1967. Resolutions were passed in opposition to containerization calling for all containers to be stuffed and stripped by ILA labor at deep-sea rates and at waterfront facilities, piers or terminals. The ILA thus entered the 1968 negotiations with a mandate from its Conventions that containerization be seriously restricted. NYSA entered the negotiations with a desire to protect the new innovative method of cargo movement.

H. *The 1968 ILA Negotiations*

25. Negotiations began in July of 1968. They were destined to be heated, protracted and marked by a long strike that lasted 57 days in New York and over 100 days in the other ports along the East-Gulf coasts of the United States. The major issue in these negotiations was first, and foremost, the issue of containerization. In its report to the President of the United States, the Board of Inquiry, established pursuant to the national emergency provisions of the Taft-Hartley Act, stated in its report, dated October 1, 1968 (attached as Exhibit 7):

> "There are two everriding issues and the failure to resolve these has prevented the parties from reaching agreement on other items."
>
> "The two critical issues relate to union-wide collective bargaining and the impact or consequences of containerization or mechanization." (Exhibit 7, p. 3)

26. In the opening days of the negotiations, the goals of the ILA and the goals of NYSA on containerization were diametrically opposed. The ILA demand was that all containers and containerized cargo was to be stripped and loaded by ILA labor. NYSA's first proposal sought the free movement of containers of all types without restriction. These counter demands were both made on the same day, namely, July 10, 1968. In the almost ten years since the 1959 negotiations NYSA and ILA had essentially agreed that containers coming from consolidators were to be stuffed and stripped by ILA labor, at the piers or docks. This was the clear thrust of Section 8(c) of the 1959 agreement. That which NYSA sought to preserve was the free and unfettered movement of non-consolidated full shipper's loads of containers moving in great volume through the Port of New York.

27. From August 23 of 1968 and continuing into January of 1969, the subject of containerization was almost a daily item for discussion and continued disagreement in the negotiating sessions. On October 1, 1968, the ILA called a coast-wide strike in all ports from Maine to Texas. This strike was enjoined under the emergency provisions of the Taft-Hartley Act shortly after it started. Negotiations continued in the following months, again with very little progress. It was not until after NYSA agreed to increase GAI benefits, which up to that time covered 1600 hours per year, to 2,080 hours per year, that ILA indicated a willingness to explore changes in its position which would permit the continued free flow of shippers' loads of containers. This improvement in GAI was to cost the employers in the Port of New York in the contract year ending 9/30/76 over $50,000,000 per year in additional benefits (Exhibit 2). It was the *quid pro quo* for the ILA moving away from its firm position of adamancy that *all* containers be stuffed and stripped at the docks by ILA labor. By January 12, 1969, basic agreement had been reached in the Port of New York. The 3-year collective bargaining agreement

(attached as Exhibit 8) to be effective for the period October 1, 1968 to September 30, 1971 contained the following three major items:

(a) Wage and fringe benefit increases amounting to $1.60 per hour over the three-year term;

(b) An increased GAI of 2,080 hours per year for all qualified workers covered by the various ILA craft agreements; and

(c) The Rules on Containers

28. The ILA had by the collectively-bargained Rules on Containers thus preserved the protection it had won beginning in 1959, and which it had fought for with countless strikes and work stoppages. On the other hand, the employers won the right to continue to move most containers, namely non-consolidated full shipper loads, without stuffing or stripping by union members. Thus, manufacturers' loads or full shippers' loads, as well as all containers coming from or going to points fifty or more miles from a port, constituting 80% of the containers moving in the Port of Greater New York, were excluded from the stuffing and stripping requirements. The ILA insisted on each and every one of the eight different rules set forth in Rule 3 of the Rules on Containers and entitled "Rules on No Avoidance or Evasion". Each of these rules was intended to assure that the employers and carriers would live up to their obligations and stuff and strip at the piers all LTL or consolidated container loads. Most importantly, the union insisted on a clause set forth in Rule 3(h) which, in effect, permitted the renegotiation of the rules if the purpose of protecting and preserving the work jurisdiction of the ILA was not accomplished by the provisions of the rules. Rule 3(h) was resisted strongly by the employers who capitulated under pressure at a time when the entire coast was shut down and where the effect on the national economy was extremely grave.

29. The labor agreement reached on January 12, 1969, in New York did not end the strike. The ILA refused to submit the agreement for ratification until all other ports had accepted the basic New York contract. Refusal to bargain charges were brought to the National Labor Relations Board by NYSA. The NLRB sought and secured an injunction mandating a referendum by the ILA members in New York. On February 14, 1969, the agreement having been accepted by the membership, the strike ended and there was a return to work in New York. In other ports, the strike continued. Finally, on April 14, 1969, agreement was reached in the last holdout ports in Texas. The strike had lasted a total of 115 days in various ports. In the last analysis, however, the ILA obtained approximately the same container agreement in all ports from Maine to Texas.

I. The Period Following the 1968 Negotiations—Second Circuit and NLRB Upheld Legality of Rules on Containers

30. The new collective bargaining agreement created a container committee which ". . . shall have the responsibility and power to hear and pass judgment on any violations of these rules." (Exhibit 8, p. 70 Rule 3(g)). Shortly after the negotiations ended, the functions of the committee were given to the NYSA-ILA Contract Board. During the period following the contract, it met with great frequency and held hearings on alleged violations of the Rules. This committee has made many findings of violations, especially in cases involving consolidators. Attached as Exhibits 9A through 9G inclusive are various container violation reports which were issued during that period, advising all stevedores and carriers of the necessity for strict compliance with the Rules on Containers.

31. The work of the NYSA-ILA Contract Board with respect to containerization continued with almost weekly meetings. In May of 1970, the ILA gave notice that the traditional work jurisdiction of deep-sea longshoremen was being threatened by certain practices including letters of concurrence issued by certain members of the NYSA. (A concurrence was an authorization issued by a carrier that customs inspection could be carried out at a facility away from the piers.) The ILSA demanded

assurances from NYSA that the Rules on Containers would be enforced according to their terms and all concurrences would be withdrawn. The ILA charged that these concurrences were being used as a device to have containers moved to consolidators' stations where customs inspection would take place. Extensive negotiations were held between the NYSA and ILA on this subject. The parties were unable to reach agreement. Thereupon, ILA invoked the provisions of Rule 3(h) (Exhibit 8, p. 70) and issued directions to its membership that all containers in all North Atlantic Ports were to be stuffed and stripped at the piers. This stoppage of all containers continued for several days. Finally, settlement was reached on May 27, 1970 (Exhibit 9D).

32. The legality of the Rules on Containers was tested in the Courts and before the NLRB by Intercontinental Container Transport Corporation ("ICTC"). ICTC brought an action in the federal courts against NYSA and ILA, seeking to enjoin the enforcement of the Rules on Containers based on their alleged illegality under the Antitrust Laws. The United States Court of Appeals for the Second Circuit, *International Container Transport Corp.* v. *New York Shipping Association, Inc. and International Longshoremen's Association*, 426 F.2d 884 (2nd Cir. 1970), upheld the lawfulness of the Rules on Containers as valid work preservation provisions. Similarly, the Rules on Containers were held to be valid work preservation rules by the 22nd Region of the National Labor Relations Board ("NLRB") in NLRB Case Nos. 22-CE-12 and 22-CC-389. In that case, ICTC filed an unfair labor practice charge asserting that NYSA and ILA had by the Rules on Containers violated 8(e) of the National Labor Relations Act, as amended, and that the ILA had violated 8(b)(4)(B) thereof, by entering into "an agreement whereby said employer-member ceases or agrees to cease doing business with other employers." After extensive analysis and investigation, the charges were dismissed and the validity of the Rules on Containers upheld since they were found to involve legitimate union concern and a proper subject of collective bargaining. The determination of John J. Cuneo, Regional Director of the NLRB, is annexed as Exhibit 10. On appeal, the dismissal by the Regional Director was affirmed by the General Counsel of the NLRB in a decision dated October 16, 1970, which is attached as Exhibit 11.

J. The 1971 CONASA-ILA Negotiations

33. Negotiations between CONASA and ILA continued on various dates from November 16, 1971, through February 14, 1972. The ILA had commenced a coast-wide strike on October 1, 1971, because of the breakdown of negotiations and the GAI issue in New York. This strike continued until enjoined by a Taft-Hartley injunction in various courts during the period November 26, 1971 to November 29, 1971. In the negotiations with CONASA, ILA was concerned not so much with the substantive container rules but with methods of assuring that the Rules on Containers were uniformly and non-discriminatorily enforced and applied. Most of the negotiations during the 1971-1972 period were spent in discussions with respect to methods of enforcing compliance with the Rules.

34. The result of these lengthy negotiations between CONASA and ILA was that the Rules on Containers were adopted as the CONASA-ILA Rules and embodied in the present collective bargaining agreement between CONASA and ILA covering the period from November 14, 1971 through September 30, 1974. The CONASA-ILA labor agreement is attached as Exhibit 12.

35. Soon after the contract had ben agreed to by the ILA, the ILA continued its efforts to obtain full and complete enforcement of the Rules on Containers. At meetings with employer representatives the ILA again reiterated its position that the carriers were violating the contract. On May 11, 1972, the ILA, by Thomas W. Gleason, President, served notice on NYSA that violations of the Rules on Containers ". . . have now grown to where there is a complete abrogation and disregard of the contract with respect to the loading and stripping provisions . . .". The ILA served notice that unless all violations are stopped immediately the ILA would in-

voke its contractual rights under 3(h) of the Rules on Containers (Exhibit 12, p. 3). In response thereto, on May 12, 1972 the President and Chairman of NYSA sent a letter to all steamship carriers and direct employers that the Rules on Containers must be strictly observed (Exhibit 9G). In this connection it was stated that: "The ILA is particularly disturbed by the increased use of consolidators and truckers to perform work which is clearly within the jurisdiction of the ILA under the contract." It was stated that spot audits and investigations would commence immediately.

36. From that point forward, the two container investigators, employed by the joint NYSA-ILA Container Fund, to uniformly enforce the Rules on Containers and to uncover and investigate violations thereof, were supplemented by NYSA employees who began to visit the many consolidation facilities in the Port of Greater New York where containers were being stuffed and stripped by other than ILA labor. After the above letters (Exhibit 9G) were distributed, many meetings of the NYSA-ILA Contract Board sitting as the joint NYSA-ILA Container Committee were held and reports of investigations received. In the course of these meetings, various steamship carriers were called in for the purpose of determining whether or not the Rules were being violated. Despite the best efforts of the parties, the ILA continued in its position that the Rules on Containers were not being lived up to especially with respect to consolidators' facilities. Finally, on October 31, 1972, a notice was sent by the NYSA-ILA Contract Board to all steamship carriers and direct employers. A copy of this letter is attached as Exhibit 13. This letter again warned that the ILA was concerned with "the spread of consolidation stations operated by steamship carriers as well as those outside the industry" and that the ILA would invoke 3(h) unless the violations were discontinued.

37. The number of violations found by the container investigators continued to grow. The ILA had stated many times that the carriers could stop the violations by not supplying their containers to consolidators or to others who used them to circumvent the contract. On

November 15, 1972, notice was given to the principal container lines in the Port of New York to attend a meeting at the Whitehall Club on November 20, 1972. At this meeting (the minutes are appended hereto as Exhibit 14) the ILA took the strong position that supplying containers to consolidators was a violation of the contract and that all containers should be stopped unless the stevedores and carriers began to live up to the agreement. After the meeting of November 20, 1972, counsel met on several occasions for the purpose of drafting a document entitled "Enforcement of Rules on Containers". This document carried out the intent of the meeting of November 20, 1972. It was circulated to all carriers for their comments on December 19, 1972. A copy of the document and covering letter is attached as Exhibit 15. Certain changes were made in the draft between December 18, 1972 and its presentation to the meeting of the CONASA-ILA Container Committee held on January 25-29, 1973, in Dublin, Ireland. A copy of the Minutes of the Dublin meeting together with Interpretive Bulletin No. 1 which was issued as a result thereof, is attached as Exhibit 16. Interpretive Bulletin No. 1 was the collectively bargained interpretation of the Rules on Containers formulated by CONASA and ILA for the purpose of promulgating rules for the uniform and effective enforcement of the Rules on Containers. It codified *inter alia* the standing principle first enforced against Sea-Land Services, Inc. in 1962 that a carrier is prohibited from supplying its containers to consolidators. The Dublin Rules were viewed as the means needed to restrain violations of the Rules on Containers. If CONASA, NYSA and the ocean carriers had refused to accept the Dublin Rules, the ILA would have struck and stopped all containers in the North Atlantic ports, including the Port of New York. Soon after their enactment, the Dublin Rules were applied against various steampship carrier members of NYSA. In 1973, 1974 and 1975, these carriers, including those named in the complaint, *viz.* Transamerican Trailer Transport, Inc. ("TTT") and Puerto Rico Maritime Shipping Authority ("PRMSA"), paid many hundreds of thousands of dol-

lars for not obeying the Dublin Rules and for permitting consolidated containers to move over their docks without stripping or stuffing by ILA workers. The carrier members of NYSA were instructed to insist that LTL cargo be delivered to the piers in uncontainerized form.

K. *1974 Negotiations*

38. As had been the case in every major negotiation with the ILA since 1957, and specifically including the 1959, 1962, 1964, 1968 and 1971 negotiations, the principal issue faced by the CONASA-ILA negotiators continued to be containerization and its tremendous impact on the job opportunities of the ILA employees on the piers and terminals in the North Atlantic coastal range. The negotiations commenced again with the demand of the ILA that all containers be stuffed and stripped on the piers by the ILA. In presenting this demand at the commencement of the CONASA-ILA negotiations, ILA President Thomas W. Gleason again reiterated the oft-repeated position of the ILA that containerization had deprived the ILA of countless job opportunities and that in order to protect its traditional work jurisdiction and the pierside jobs of the ILA longshoremen and related crafts, the ILA would have to insist upon the right to stuff and strip every container at the pier facility with deepsea ILA labor.

39. In pointing out the background of this demand, Mr. Gleason stated that the ILA work force in the Port of New York during the period 1968 to 1974 had been decimated by the effects of innovation. In this regard he pointed out that the almost 24,000 Longshoremen who had labored almost 40 million manhours in the contract year 1967/68 had been reduced to 13,000 longshoremen in the Port of New York who had labored only approximately 24.5 million hours in the contract year 1972/73 (Exhibit 2). He also complained bitterly that the Rules on Containers were not being lived up to by the employer members of CONASA, the steamship companies and the stevedores to the full extent that they should be lived up to and that certain consolidators or non-vessel operating common carriers ("NVO's"), had

conspired with others to circumvent the Rules on Containers by various devious devices. He stated that the ILA could not continue to give up work opportunities to innovation in areas where the work had been traditionally performed by the ILA and where it was of the nature that could just as easily be performed in the piers and terminals as it had traditionally, than at inland installations within a 50-mile area of each port by outside groups.

40. CONASA's initial position was that all containers should be permitted to move without any restriction by the ILA. The mere making of this demand led to almost a complete breakdown of the negotiations at that point. The ILA immediately rejected any such position; said it was a regression; that the ILA could not tolerate it; and that the ILA would not be pressured out of business; and, that the stated desires of the ILA for a contract without a strike should not be taken as any sign of weakness. He stated that if CONASA was to take any position of that type, that a strike would be certain and assured.

41. As a result of the diametrically opposed positions of the parties at the first negotiating session in March, 1974, no further formal meetings were held until June, 1974. However, during the interim period, various committees of ILA and CONASA, as well as NYSA, met with the ILA seeking to find a means to settle and resolve the container issue. The desire of the shipping industry was to permit shippers as much flexibility as possible without, at the same time, causing a certain work stoppage. The negotiations had been entered into with publicly stated declarations by both the industry and labor that the shippers need not have any fear of a work interruption in October, 1974 as had been the unfortunate history for some 30 years prior thereto.

42. It appeared to the members of CONASA, as well as the members of the various shipping associations in the North Atlantic, that the container issue would have to be resolved and resolved on a fair, equitable and proper basis if progress was going to be made in the negotiations. Therefore, a median position between that of the ILA

and that of CONASA would have to be found. Many proposals were discussed and analyzed. In exploring all of the various alternatives, and various other methods which might be used to protect the work opportunities and job opportunities of the ILA and its workers, the parties kept on coming back and back again to the same rules which had been in existence from 1959 through the time of the negotiations.

43. The formal negotiations between CONASA and ILA commenced at the Di Lido Hotel in Miami Beach, Florida on June 11, 1974. On each and every day, as well as evening and night, from June 11 right to the end of the negotiations on June 21, 1974, the major issue and sometimes the only issue separating the parties was again this issue of containerization. During the course of these negotiations the discussions continued almost without end. Drafts, redrafts, attempts at solutions all proved unavailing. The parties finally realized that the only way that progress could be made was to continue the Rules which each of them had found to be fair and equitable. These Rules were the same Rules that had been in effect since 1959 and had been codified in 1968 and accepted in their totality by CONASA and ILA in 1971.

44. The parties then turned their attention to the simplification of the Rules and their redrafting and revision for the purposes of clarity and better understanding. It was decided by the parties to incorporate Interpretive Bulletin No. 1, the so-called Dublin Rules (Exhibit 16) into the 1974-77 Rules in order to assure the effective implementation of the Rules and to provide the means to restrain and proscribe violations of the Rules. The final agreement was reached on the 1974-77 Rules on Containers in the same form as they existed for years (See Exhibit I to General Counsel's Exhibit 3). The execution of the 1974-77 Rules on Containers did not put to rest the ILA's continuing complaint that the steamship carriers were violating the contract. In late March, 1975, the ILA announced its intention to exercise its right to reopen the Rules because of its claim that the carriers were not abiding by their contractual commitments. On April 28, 1975, the

ILA unilaterally suspended the Rules and began to strip all containers in all North Atlantic Ports with the exception of shippers' loads. This job action continued for almost a month during which intensive negotiations were conducted between CONASA and ILA to settle the disputes. Finally, on May 30, 1975, the parties resolved their differences with the execution of the clarified and restated 1974-77 Rules on Containers (Exhibit J to General Counsel's Exhibit 3). Containerization, however, continues to this day to be a hotly contested and complex issue in longshore labor relations. The current collective bargaining negotiations for a new contract to commence October 1, 1977 are stalemated. The ILA is now engaged in a strike against all containership carriers from Maine to Texas. Containerization and its effects are the critical issues separating the parties.

L. *History of Litigation*

45. The Rules were first made the subject of litigation in 1970 when the United States Court of Appeals for the Second Circuit upheld their enforcement as valid work preservation rules under the antitrust laws. *Intercontinental Container Corp.* v. *New York Shipping Ass'n.*, 426 F.2d 884 (2d Cir. 1970). The plaintiff in the antitrust proceeding, namely, Intercontinental Container Transport Corp., also initiated related proceedings before the NLRB by filing unfair labor practice charges with the 22nd Region of the NLRB, claiming that the Rules constituted unlawful hot cargo agreements in violation of Section 8(e) of the Act and that their enforcement amounted to an illegal secondary boycott in violation of Section 8(b)(4)(ii)(B) of the Act (29 U.S.C. 158(b)(4)(ii)(B)).

46. The then Regional Director of the NLRB's 22nd Region, after investigation, dismissed all charges, finding that the Rules have "as its object, the preservation of work performed by longshoremen" (Exhibit 10). The Regional Director's dismissal of ICTC's charges was affirmed on appeal by the NLRB's General Counsel (Exhibit 11).

47. From 1970 when the Rules first received official sanction by the Second Circuit and then by the NLRB as valid work preservation provisions, until March, 1973, no adverse action was taken by any judicial or administrative tribunal questioning their continuing validity. On March 15, 1973, Sea-Land filed with the Federal Maritime Commission ("FMC") proposed amendments to its tariff between the East Coast and Puerto Rico. These amendments purported to incorporate and embody into the Sea-Land tariff some of the provisions of the Rules on Containers and the Dublin Rules. The FMC thereupon initiated Docket No. 73-17 for the purpose of investigating the lawfulness of the proposed tariff amendments under the Shipping Act and Intercoastal Shipping Act.

48. On June 1, 1973, while the FMC proceeding was pending, unfair labor practice charges were filed by a consolidator in the New York to Puerto Rico trade, namely, Consolidated Express, Inc. ("CEI") against NYSA and ILA with the 22nd Region of the NLRB contending, as ICTC had previously unsuccessfully contended, that the Rules were violative of Sections 8(e) no adverse action was taken by any judicial or administrative and 8(b)(4)(ii)(B) of the Act. The NLRB's Acting Regional Director thereupon obtained a preliminary injunction under Section 10(1) of the Act (29 U.S.C. 160(1)) prohibiting the enforcement of the Rules solely against CEI. *Balicer* v. *International Longshoremen's Association AFL-CIO and New York Shipping Association, Inc.*, 364 F. Supp. 205 (D.N.J.) aff'd without opinion, 491 F.2d 748 (3d Cir. 1973).

49. On November 2, 1973, similar unfair labor practice charges were filed by another consolidator, namely, Twin Express, Inc. ("Twin"). A similar limited injunction was obtained prohibiting the enforcement of the Rules against Twin. *Balicer* v. *ILA and NYSA*, 86 LRRM 2559 (D.N.J. 1974) (not officially reported). The issuance of this second preliminary injunction was not appealed. Both CEI's and Twin's charges were then made the subject of consolidated NLRB complaint proceedings before the NLRB's Administrative Law Judge Arnold Ordman.

50. On August 2, 1974, while the NLRB proceeding before Judge Ordman was pending, and after its acquisition of Puerto Rican services of Sea-Land, Seatrain Lines, Inc. and TTT, the only carriers in the New York to Puerto Rico trade, PRMSA filed a tariff, with the FMC, effective September 16, 1974. PRMSA's tariff incorporated and embodied the 1971-74 CONASA-ILA Rules on Containers and the Dublin Rules. The FMC thereupon initiated Docket No. 74-40 to investigate the lawfulness of the proposed PRMSA tariff under the Shipping Act and Intercoastal Shipping Act. The Commission consolidated Docket No. 74-40 with the preexisting Docket No. 73-17, which involved the then amended tariff of Sea-Land which had been cancelled upon PRMSA's entry into the Puerto Rican trade. On February 14, 1974, PRMSA filed amendments to its Puerto Rican tariff, to be effective March 16, 1975, which replaced the previously incorporated 1971-74 Rules on Containers. PRMSA embodied in its Puerto Rican tariff, in replacement thereof, certain of the Rules on Containers appearing in the 1974-77 CONASA-ILA Collective Bargaining Agreement (Exhibit I to General Counsel's Exhibit 3). On March 14, 1975, the FMC ordered that PRMSA's amended tariff be included within Docket No. 74-40 for investigation.

51. While the FMC proceeding was pending, the NLRB's Administrative Law Judge Arnold Ordman issued his initial decision on December 9, 1974, upholding the legality of the Rules as valid and proper work preservation clauses under national labor law. On December 4, 1975, the NLRB reversed the Administrative Law Judge's decision, concluding that the Rules violated Section 8(e) and that the ILA had engaged in an illegal secondary boycott against, *inter alia*, Respondent NYSA, violative of Section 8(b)(4)(i)(B). *International Longshoremen's Assn. and New York Shipping Ass'n., Inc.* (*Consolidated Express, Inc. and Twin Express*), 221 NLRB No. 144 (1975). NYSA and ILA sought review of the NLRB's determination before the Second Circuit. In December, 1975, the ILA advised NYSA of its deci-

sion not to enforce the Rules in the Port of New York. A copy of NYSA's report to its members of the ILA's decision is annexed hereto as Exhibit 17.

52. On June 29, 1976 the Second Circuit affirmed the NLRB's decision. *International Longshoremen's Association* v. *NLRB*, 537 F.2d 706 (2d Cir. 1976). A petition for rehearing *en banc* was denied on August 6, 1976, and the judgment of the court of Appeals was entered on September 9, 1976. On January 10, 1977, the Supreme Court denied *certiorari*, 50 L.Ed. 2d 753 (1977). A petition for rehearing was denied on February 28, 1977. On February 3, 1977, NYSA advised Region 22 of the NLRB that it had fully complied with the order of the NLRB as enforced by order of the Second Circuit. A copy of NYSA's advice to the NLRB is annexed hereto as Exhibit 18. Thus, since December, 1975, the Rules have not been implemented in the Port of New York against Dolphin, SJF or any other consolidator.

53. The instant proceeding was instituted on May 6, 1975 when Dolphin Forwarding, Inc. filed a Section 8(e) charge against NYSA and ILA and a Section 8(b)(4)(ii)(B) charge against ILA. San Juan Freight Forwarders, Inc. followed suit on May 7, 1975 when it filed a Section 8(b)(4)(ii)(B) charge against ILA. On August 14, 1975, the Regional Director of Region 22 petitioned for a Section 10(1) preliminary injunction in the United States District Court for the Southern District of New York. On September 18, 1975, U.S.D.J. Lloyd F. MacMahon entered an order denying the petition for a preliminary injunction and staying and holding the proceeding in abeyance until entry of the final determination by the NLRB in the proceeding involving Consolidated Express, Inc. and Twin Express, Inc., *Danielson* v. *International Longshoremen's Ass'n.*, —— F. Supp. —— (S.D.N.Y. No. 75 Cir. 4027, September 18, 1975). On March 10, 1976, three months after the NLRB's decision on December 4, 1975 in the Consolidated and Twin proceeding, a consolidated complaint is-

sued herein. No action has been taken to reactivate the petition for a preliminary injunction.

JOHN M. HAYNES
/s/ John M. Haynes

Sworn to before me this
12th day of October, 1977

/s/ Jack Silverman
JACK SILVERMAN
Notary Public

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

Case Nos. 2-CC-1364, 2-CE-75, 2-CC-1365

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION AND NEW YORK SHIPPING ASSOCIATION, INC.

and

DOLPHIN FORWARDING, INC.

and

SAN JUAN FREIGHT FORWARDERS, INC.

NYSA's DIRECT CASE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

MICHAEL J. NICHOLAS, being duly sworn, deposes and says:

I have been employed by Respondent, New York Shipping Association, Inc. ("NYSA"), since January 1, 1975, as its Contract Administration Office. My functions and duties specifically and exclusively involve the administration, policing and enforcement of the provisions of the collective bargaining agreement between NYSA and International Longshoremen's Association, AFL-CIO ("ILA"). Prior to my employment with NYSA I had been employed since 1962 by Sea-Land Service, Inc., first in its Security Department and later as the manager of its waterfront terminal and cargo handling operations in the Port of New York. I am fully familiar with the facts and circumstances set forth in this affidavit which is being submitted as part of NYSA's direct case.

1. The Rules on Containers, which are the subject of this proceeding, are designed to preserve to ILA dockworkers the work of loading and unloading less-than-trailerload ("LTL") cargo, originating from or destined to points within 50 miles of the Port of New York into and out of ocean containers. In this way, ILA longshoremen receive some limited preservation of work functionally equivalent to the historical work performed by them at waterfront piers and terminals before the advent of containerization. The Rules were designed to cushion in part the impact of the innovative cargo handling techniques of containerization upon the job opportunities of ILA longshoremen. They render to the ILA that work which, absent containerization, would come to the piers and waterfront terminals. This cargo, which traditionally was trucked to the piers to be loaded or unloaded for ocean transport could just as easily continue to be brought to the piers to be handled by ILA labor. This portion of the ILA's traditional work jurisdiction would thus be maintained and preserved. Containerization which the ILA permitted the ocean carrier-employers of its members to develop and nurture makes it possible for this traditional ILA work to be shifted from the piers to warehouses and other inland consolidation and deconsolidation facilities. This shift of work from the piers to inland facilities is not based on mere surmise. In the Port of New York alone, there are tens of export and import warehouses and distribution stations situated within the Port area that are now in a position to siphon away from the piers all of the local consolidation and deconsolidation work which had been performed at the piers exclusively by ILA labor.

2. The impact of this siphoning of work from the piers upon the job opportunities of ILA longshore employees is potentially catastrophic. Since its advent in the late 1950's, containerization has drastically reduced the work opportunities of ILA longshoremen. This reduction occurred even though the ILA enjoyed the minimal protection of the Rules. In the Port of New York alone, in a period of 18 years, there has been a loss of more than 20 million man hours of work per year. In 1958 when

containers were of minor significance in the Port of New York, 12 million long tons of general cargo were handled utilizing 42,835,226 ILA man hours. By 1976, although more cargo was moved (approximately 19.5 million long tons), only 19,694,632 man hours of ILA labor were required (See Exhibit 2 to Haynes Affidavit). During that period the number of longshoremen was reduced from 31,629 in 1958 to approximately 12,000 in 1976.

3. The effect of containerization upon the ILA's work jurisdiction will be further exacerbated by any decision invalidating the Rules. All local cargo, which has been handled at the piers, will be loaded and unloaded for ocean transport away from the piers at inland consolidation and deconsolidation stations. This cargo—approximately 20% of the containerized cargo moving through the Port of New York—totals approximately 3 million long tons per year. Moreover, other pier locations, not directly involved with the Rules, will shift inland. For example, the physical transfer of cargo from rail cars to ocean containers, which in the past has been traditionally performed at the piers, will shift to the rail yards.

4. The invalidation of the Rules in the Port of New York alone will mean the loss of 2,000 longshore jobs. There are presently in the Port of New York 13 expansive, modern container terminals whose total capital investment exceeds 700 million dollars. At these waterfront terminals most of the more than 100 carrier, stevedore and other maritime members of NYSA engage in operations. At these container terminals there are large enclosed facilities having a total area in excess of 2,200,000 square feet that have been constructed exclusively for the consolidation and deconsolidation of containers. The consolidation and deconsolidation functions require a permanent labor force of approximately 1,000 longshoremen who engage in the physical loading and discharging of cargo into and out of ocean containers. There are an additional 1,000 ILA employees who perform terminal functions directly related to the consolidation and deconsolidation work. These other ILA employees are comprised of other ILA longshore crafts, including checkers, coopers (cargo repairmen), delivery and receiving clerks,

carpenters, maintenance men, mechanics, etc. who are involved in the overall physical movement of cargo from the tailgate of the delivery trucks to the stowage on board ocean vessels. If these 2,000 ILA jobs were eliminated, these men would then be entitled under the NYSA-ILA labor contract to receive their full Guaranteed Annual Income ("GAI") *i.e.*, a full year's wage, since no work would be available for them. Currently the cost of GAI in the Port of New York exceeds $51 million dollars. If an additional 2,000 men were to receive full GAI it would add another 40 million dollars to the already burgeoning GAI cost. In addition, it would erode any GAI cost savings derived from attrition of current GAI recipients. Under the tonnage assessment formula in effect for the Port of New York, monies contributed by NYSA direct employers of ILA labor are disbursed first to satisfy GAI obligations. The stability and actuarial soundness of the fringe benefit funds, including the pension and welfare funds, thus depend upon the ability to control and maintain the level of GAI costs. Past history has established that any increase in the tonnage assessment rate is shortly followed by a loss of cargo normally moving through New York, increased GAI costs because of attendant reduction in man hours of work and the necessity for further tonnage assessment increases. If the Rules are held invalid, the Rules will be of little consequence in controlling spiralling GAI costs with dire economic consequences for the Port of New York.

5. These drastic effects have already been set in motion as a result of the NLRB's decision in *International Longshoremen's Ass'n* (*Consolidated Express, Inc.*), 221 NLRB (1975), *enforced sub nom. International Longshoremen's Ass'n* v. *NLRB*, 537 F.2d 706 (2d Cir. 1976), cert. denied, 50 L.Ed. 2d 753 (1977). As each day passes, more and more consolidators and warehousemen are siphoning cargo away from the piers, not only in the Puerto Rican trade involved herein but in the larger North Atlantic and Far East trades. Already by March, 1977 more than 100 permanent ILA jobs in-

volving consolidation and deconsolidation functions were eliminated. It is expected that this erosion of work will continue at a progressively higher rate as additional LTL cargo is shifted from the piers to inland facilities. This is evident from the daily hiring statistics which show that hirings of longshore employees in the Port of New York were substantially less in 1977, averaging about 700 fewer jobs per day than in 1976. Unless the Rules are upheld, the entire framework of labor relations in the longshore industry may be radically and significantly altered. The longshore industry will be faced—as it presently is in the labor negotiations now being conducted along the East and Gulf Coasts of the United States—with an almost insurmountable task in finding a solution to the serious problems wrought by containerization.

/s/ Michael J. Nicholas
MICHAEL J. NICHOLAS

Sworn to before me this
13th day of October, 1977

/s/ Martin Lowenstein
MARTIN LOWENSTEIN
Notary Public
State of New York
No. 31-4617693
Qualified in New York County
Commission Expires March 30, 1979

UNITED STATESOF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

Case Nos. 2-CC-1364, 2-CE-75, 2-CC-1365

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION AND NEW YORK SHIPPING ASSOCIATION, INC.

and

DOLPHIN FORWARDING, INC.

and

SAN JUAN FREIGHT FORWARDERS, INC.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

WILLIAM O. GOHLKE, residing at 59 Tam-O-Shanter Drive, Mahwah, New Jersey, 07430 (201-529-3477), being duly sworn deposes and says:

1. I am submitting this statement at the request of the International Longshoremen's Association, AFL-CIO ("ILA"), one of the Respondents in the above-captioned proceeding. To the best of my knowledge and understanding I am not an involved party and I am hereby testifying to certain events in my background and experience as an employee or officer of Sea-Land Services, Inc. ("Sea-Land") and Seatrain Lines, Inc. ("Seatrain").

2. I am presently the owner of Transocean Transport Inc. of Mahwah, New Jersey, a steamship sales agency company. From 1959-1962 I was a director and employee of Sea-Land. In 1962 I resigned and became a consultant to the Puerto Rican government respecting transportation activities. From 1963 through 1973 I was an officer and employee of Seatrain. During my tenure with Sea-Land and Seatrain I was primarily engaged

in the marketing and sales activities of those carriers. In those capacities I variously resided in Puerto Rico and the continental United States so I can testify first hand respecting the following.

3. While at Sea-Land's Port Newark facility I was able to observe and become familiar with the stuffing and stripping facilities conducted by Sea-Land of cargo handled for Sea-Land's customers. Sea-Land also received Less-Than-Container-Load ("LTL") containers which were not handled by its longshoremen at stuffing and stripping shed Building 290. In my various capacities I learned that these containers were not stripped by Sea-Land stevedore employees. Nonetheless, when loaded aboard the Sea-Land vessels they carried Sea-Land seals which were affixed at some point between receipt of the LTL containers and recording of the seals by the checker. This would have to have been done with the explicit knowledge of Sea-Land. Otherwise, a charge would have to have been recorded for the labor involved with stuffing and stripping the container. To the best of my recollection this practice took place on a daily basis in 1961 and 1962. At that time I was aware that such practices were contrary to the existing agreement as I understood it between the ILA and NYSA respecting the handling and processing of the LTL containers. My understanding at that time, as a matter of general knowledge among Sea-Land personnel and its directors, was that all LTL cargo was required to be stuffed by ILA longshoremen at the pier. Among the foregoing containers on which the seals had obviously been changed without re-handling of their contents by the longshoremen were consolidated containers of Valencia Baxt, a large off-pier consolidating firm.

4. To my knowledge, at that time Sea-Land's policy was to offer consolidators, such as Valencia Baxt and others, an FAK rate which encouraged them to collect and process LTL cargo. In my opinion, Sea-Land indulged in this practice to by-pass the ILA labor employed by Sea-Land.

5. When I moved over to Seatrain it was apparent that Seatrain did not have facilities for stuffing and

stripping containers all of which it owned. Seatrain was located in Edgewater, New Jersey and did not employ any stuffing and stripping employees to consolidate LTL cargo. Instead it was my practice as director of marketing, as well as the practice of the employees under my direction, to refer all requests of customers to handle their less-than-container loads to off-pier consolidators such as, for example, Collella Brothers, Puerto Rican Forwarding and Transloric. In this manner Seatrain was able to compete with Sea-Land in the LTL end of the business. Thus, Seatrain, like Sea-Land, furnished the consolidator with its containers which they (consolidators) consolidated with the cargo of their customers, for whom they also handled full-shipper-load containers. When those containers were received at the pier, Seatrain seals were affixed to them and they were lifted aboard Seatrain vessels in the same manner as occurred in Sea-Land.

6. In the course of my employment with Seatrain I was aware that Dolphin Forwarding, Inc. ("Dolphin"), a Massachusetts concern, was using Seatrain containers to transport cargo which it or its agents stuffed into these containers at various points in Massachusetts, New York, New Jersey and other points in transit. These containers were received by Seatrain and handled in the manner described immediately above. To my knowledge, numerous Seatrain customers were referred by me and subordinates to Dolphin to handle their LTL cargo. Seatrain issued Dolphin booking numbers, as were reflected on Seatrain's records. To the best of my recollection this practice took place from 1964 throughout the balance of my employment with Seatrain. It was quite apparent to me that though the bills of lading and other documentation suggested that the Dolphin cargo was booked as having an originating point in Massachusetts, this was not the case. The recordings of the turnaround of containers and related equipment issued on Dolphin bookings clearly showed that insufficient time elapsed between the issuance and return of the equipment to permit the containers to be transported to Massachusetts and back. This left the unmistakable impression that the loading of the containers had to have

taken place in the New York-New Jersey proximity of the Seatrain operation. It was not Seatrain's concern or my concern as an official of Seatrain to inquire into this practice. Seatrain's and my objective was to obtain business and transporting containers to and from Puerto Rico. Inasmuch as Seatrain did not have facilities and was apparently unwilling to invest in facilities for stuffing and stripping LTL cargo, there was no question in my mind that the above-described practice respecting LTL cargo handled by longeshoremen contravened the understanding between Seatrain and the ILA whereby ILA longshoremen were to handle—that is, stuff and strip—cargo moving in Sea-Land containers. Parenthetically, I note that these practices were encouraged by Seatrain to the point that Puerto Rican Forwarding was designated as a Seatrain facility in the immediate New York-New Jersey area by Seatrain. Finally, it was Seatrain's consistent practice to load only its own containers aboard its vessels throughout the period that I worked for that carrier. Accordingly, any shipper including consolidator's such as Dolphin would have had to use Seatrain-owned containers in order to make their operation possible through Seatrain. This was the identical case respecting Sea-Land's operations while I was employed by that carrier, i.e., it only loaded its own Sea-Land-owned containers.

7. The foregoing is the truth to the best of my personal knowledge and recollection.

/s/ William O. Gohlke
WILLIAM O. GOHLKE

Sworn to and subscribed before me
this 19th day of October, 1977.

/s/ Herzu S. Eisenstadt
HERZU S. EISENSTADT
Notary Public
State of New York
No. 24-4514648
Qualified in Kings County
Commission Expires March 30, 1979

SUPREME COURT OF THE UNITED STATES

No. 79-1082

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, ET AL.

ORDER ALLOWING CERTIORARI

Filed January 21, 1980

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1980 313955 230